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THE JURIST.

LONDON, JANUARY 13, 1866.

THE question of how we shall punish our criminals, so as best to further the proper object of punishment, viz. the prevention of crime, has now for some years engaged not only the attention of our philanthropists, but also that of the Legislature; the former, moved by their conscientious and kindly feelings, the latter, by the necessity of meeting the difficulties which have been presented by the stopping of the outlet for our criminal population to the colonies, and the consequent retention of this class on our own shores.

Our attention has been called to a paper on this subject which deserves consideration, both on account of its author, Mr. Barwick Baker, being one of our most energetic and experienced workers for the reformation of criminals, and on account of the fact, that a movement is now being made to bring his views before the different quarter sessions, and to induce the magistrates to adopt them, or at least to give them a trial. Mr. Baker's opinions are briefly these:—

Our custom hitherto, in passing sentences on criminals, has been, that the judge or magistrate should hear the evidence adduced, and should, to the best of his power, estimate from it the degree of moral guilt of the prisoner, and award a punishment as nearly as may be in exact proportion. If the value stolen be small—if it be taken from a stranger, and if there be nothing to shew premeditation—the punishment is slight. If the value be large, or stolen from a master or friend, or with the appearance of premeditation, the punishment is heavier. This is acting solely and literally on the principle of retaliation—not in the sense of a feeling or intention of revenge, but of the weighing back a quantum of punishment which, in the opinion of the judge, shall be equal or proportionate to the moral guilt of the offender. This is the system which has obtained so firm a hold on men's minds that it is thought almost an impiety to doubt it. Yet it will hardly stand the test of reason; still less that of practice. No one in the present day allows that we get either pleasure or profit from merely punishing a criminal. When at a deliberative meeting we discuss the principles of punishment, we profess that our object is solely the prevention of future crime; but when in court we discuss the sentence to be passed, we talk much of "natural justice" (though no one can define exactly what that means, or what law, human or divine, ordains it); much of the criminal's deserts; much of the necessity of satisfying the respectable portion of the community by a sentence of proper severity; but very little of any calculation based upon a knowledge of the feelings of the lowest, the poorest, the weakest, which may shew either how those weak ones may be best kept out of temptation, or how the honest man may be saved from having his goods stolen, and then being heavily taxed to punish the thief who has robbed him. Our profession, our theory,

our real intention, is Christian and philosophical, but our practice is neither one nor the other.

The most striking evil in our present system is its utter uncertainty. All allow that if deterrence is our object—certainty of punishment is of far more avail than severity. Yet those who talk most of the value of certainty seem to forget or ignore this most palpable truism—viz. that if we are to prevent a crime, we must prevent it before it is committed, and not after.

If certainty of punishment is to prevent it, that certainty must exist before the crime which it is to prevent.

Three-fourths of our clever thieves have been hardened and trained to crime by a long course of three months' imprisonments: that a repetition of three months' imprisonments is the direct cause of nearly all the habitual crime of the country; and that practically in every district where a repetition of three months' sentences has existed, crime is rife, and wherever cumulative and fixed sentences have obtained, crime has decreased. But not only does our reason tell us, that sentences on our present system are likely to be varying and irregular, but, practically, we see they are so in the highest degree. Many of our most thoughtful and experienced chairmen of quarter sessions—many of our judges—make it an almost universal rule, on a second conviction, to commit to penal servitude; others hold that a first conviction should be most heavily punished, in order to terrify beginners; others, on a fifth or tenth conviction, award from six to twelve months' imprisonment—though with what object such sentences can be passed, is difficult to imagine.

Punishment should depend not on the supposed degree of criminality, but on the number of repetitions; and, as a general rule (not as a rule without exception, but one which may be adopted fairly in nineteen cases out of twenty), a culprit, on a first conviction, should receive an imprisonment of only a week or ten days, whichever period would give mere bread and water, according to the rules of the gaol to which he shall be sent. That for a second offence he shall receive twelve months' imprisonment; for a third, seven years' penal servitude; and for a fourth, penal servitude either for life, or for some such long term as shall enable him to be released on ticket-of-leave, but kept for the greater part of his life under surveillance.

The effect of such a system would be—first, that any man meditating a crime would know the penalty beforehand with startling distinctness. He would know perfectly whether he had been in prison or not, and how often, and this would tell him precisely the punishment to expect.

But, secondly, it would bring a far more important result, viz. that it must inevitably annihilate the class of old and hardened offenders, who at present are the dread of the honest, and the corruptors of the weak. Even now, not one in fifty attains either eminence or skill as a thief before he has been three or four times convicted, although at present he can find gangs of skilful thieves to instruct and shelter

him; but under the proposed system, even a thrice-convicted thief on his return to liberty would have been for seven years out of practice. If he again commence crime it must be as a bungler, and without the aid of a gang; and he would probably be soon caught and made safe for life.

Many objections are made to this system. The principal objection (as it appears to Mr. Baker) is to the existence of such a thing as twelve months' imprisonment in a gaol; as the fact of shutting a man up in a square cell under any known system of prison discipline, in a state of the most absolute dependence, and without hard labour (for real earnest hard labour is incompatible with anything we have known as prison discipline), especially when such detention is followed up by carelessly turning him out on the world when least fitted to cope with its trials, appears to him to be a treatment at once unphilosophical and unpractical; though he thinks, that if adult reformatories should be given a fair trial, the sending a man on his second conviction to a gaol, where he shall be severely punished for from three to six months (or longer, if his behaviour render it necessary), and then removing him to a reformatory, where he may be kept to real hard earnest out-door work for the remainder of his sentence, especially if we should hereafter obtain the power to make the sentence two years, and to allow him by good conduct to obtain a ticket-of-leave enabling him to work under surveillance for the latter half of his sentence, would give us as reformatory, as deterrent, and as practical a system as could be well hoped for.

Other objections are made, which he thinks will not bear close consideration. It is said, that the ten days' sentences on first convictions will be too short to deter beginners; but those who have had opportunities of watching prisoners through their confinement, know well that a man feels his first ten days far more acutely than the later portion of his sentence. Like a wild bird in a cage, he suffers severely at first; but after a time he becomes used to it, and will never again think of it with the same aversion.

Some say any system except one of retaliation would be morally unjust. But we are nowhere told that retaliation is justice; and if you tell a man clearly what will be the punishment of a crime before he commits it, there can be no injustice in inflicting it; and there is great injustice in the present system, when, the giving a man hope that he will escape with a light sentence, induces him to commit a crime, and then gives him a heavy one.

It is commonly said, that the experience we have had with boys in reformatories is of no avail in dealing with men, because "Boys can be reformed, and men can't." A very moderate study of statistics—a very moderate acquaintance with criminals—would shew that adults not only can be reformed, but that they do reform themselves in great numbers, under our most careless and unpractical system. But reforming has had little to do with the following very extraordinary decrease of crime, and for this simple reason, that the decrease took place before the boys were reformed.

In 1856 reformatories generally came into action in England, and the practice was adopted of sending to them, and, therefore, to a long detention, nearly every boy who was a second time convicted. In that year 13,981 boys and girls were committed to prison; but in the four following years the numbers were, 12,501, 10,329, 8913, 8029. Now this decrease could not have depended on the reformation of the boys, because those committed in 1856 had hardly left the reformatories in 1859, when the number had sunk to 8913, or less than two-thirds. The decrease had depended solely on the *certainty* of a long sentence on a second conviction, irrespective of the magnitude of the particular offence, and of the removal for long periods of all the old offenders who excited the envy of beginners by their skill and success, trained them to follow their steps, and shewed by their very presence that the old system was powerless to prevent theft.

And this view is also supported by the statistics of Liverpool, Manchester, and Middlesex, where exactly, as it became the practice to send the offender on every second conviction to a reformatory, did the crime diminish.

For these reasons, Mr. Baker lays down the following principles:—

"First, that to prevent the honest man from being robbed, and then heavily taxed to punish the thief who robbed him, is our duty as citizens. To save our fellow creatures from crime and temptation is our duty as Christians; but that retaliation (except for the sake of prevention) is neither a Christian, a moral, nor a political duty.

"Secondly, that the adopting retaliation as the rule or measure for punishment greatly lessens the preventive effect, which is the only real use of punishment: first, because the uncertainty weakens the deterrent power; and, secondly, because it affords no safeguard against men repeating their crimes time after time, till they become skilful, hardened, and dangerous.

"Thirdly, that a general, not universal rule, might be adopted by magistrates, which, while leaving room for a few extraordinary exceptions, might be used with good result in eighteen or nineteen cases out of twenty, and that such uniformity of practice would be intelligible to all—deterrent to future thieves—and would afford to the public a better guarantee of justice than they have at present.

"Fourthly, that it is desirable that on a first conviction, with rare exceptions, a short sentence should be passed—first, in order to increase the terror of the gaol; secondly, to encourage prosecutions before crime becomes habitual. An additional result will be, that the shortening of every first conviction will leave room in our gaols for a lengthening of the second.

"Fifthly, that if a short imprisonment, accompanied by the almost certainty of a long sentence on relapse, fail to prevent a second crime, it is desirable for the public safety that the criminal should be removed from society till such time as any habit or skill he may have acquired be lost, and until his associates will probably be dispersed.

"Sixthly, that if this treatment be followed up by greatly increased sentences on each relapse, it cannot

but have the effect of preventing the possible existence both of skilful thieves and of organised gangs, and that this would at once annihilate the worst temptation to future criminals, be a security to the honest, and lower the cost of crime to the country."

It seems to us that the advisability of adopting these principles depends on the correctness of the statistics; and a very good work would be done if these were collected on a larger scale. But further, it would be well, at all events, in a greater number of places, to adopt these principles, and compare the results with those in places not adopting them. Till something of this kind is done, and our knowledge thus extended, it seems to us impossible to judge properly as to the soundness of Mr. Baker's scheme; but we think that he has made out a sufficient case for giving it a more extended trial than it has had hitherto.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—The case of *Dowling v. Dowling* (11 Jur., N. S., part 1, p. 1033), before Sir J. Stuart, ought not to be passed over without comment. It must be admitted that the learned Vice-Chancellor has, to use his own expression, decided in the face of a strong current of authority, if his decision is to rest on the fact of the implication of an estate in the issue. Lord Thurlow's decision in *Harman v. Dickenson* (1 Bro. C. C. 90), albeit most briefly reported, was only an instance of the word "surviving" being read "other," and was a case of direct limitation to the issue. In *Ex parte Rogers* (2 Mad. 449), whoever chooses to examine that case will find that Sir T. Plumer's remarks, so far as they referred to the implication of an estate in the issue, were unnecessary to the decision—mere dicta, and may be taken for what they are worth—nothing; for letters of administration of the estate and effects of both female legatee and husband deceased had been obtained by their children, the petitioners, before the petition was presented; and Sir T. Plumer himself says (p. 454), "The 1000*l.* on the death of M. D. Rogers must belong either—first, to her personal representatives, *which these petitioners, her children, are*; or, secondly, to the children as such; or, thirdly, it must fall in as part of the residue. *The question, therefore, is between the children and the residuary legatees.*" The cases cited by Sir T. Plumer have not the slightest bearing upon the point, which he unnecessarily argues, and I can only regret that Sir J. Stuart should have added the weight of his decision to dicta which have been long since clearly and unequivocally condemned by the highest authority. In the case in question, whether it was absolutely necessary to construe the words "or their child or children" as the child or children "of the remainder then living," is, perhaps, open to doubt; but it is, in my opinion, unarguable, if there be not contained in the sentence in the will a direct limitation to the children of all the sons respectively, on their respective deceases leaving issue, that any estate can be implied in any such children in the manner suggested.

Your obedient servant,

G. L.

Rolls-chambers, Chancery-lane,
Jan. 6, 1866.

MR. G. HARRIS'S "PRINCIPIA PRIMA LEGUM" AND "THE JURIST."

TO THE EDITOR OF "THE JURIST."

SIR,—I should not have thought it worth while noticing the strictures of *The Jurist* on the above work, had it not been for the extreme unfairness, to use the mildest term, with which you have treated my book, and the frequency of this conduct on your part towards other writers. I am fully sensible, that the work in question has its faults; and the peculiar difficulties of the undertaking, inviting captious criticism in certain quarters, I pointed out in the Preface. With a fair and just review, however severe, I should not find fault. But the article in question consists simply of misrepresentation and abuse, without even aiming at criticism, in a style peculiarly characteristic of *The Jurist*.

Upon comparing the book itself with the pretended extracts from it in *The Jurist*, I find that passages are misquoted, and rendered nonsensical. The pretended summary of the author's meaning is used to distort it. In one important passage, by the trifling omission of the word "not," he is made to state directly contrary to what he really says; and by a pretended extract of a passage nowhere to be found in the book, he is actually made to assert that the law occasionally compels dead men to act as trustees! You then proceed to pronounce the book "ridiculous" and worthless, asserting that you have drawn your conclusions from the premises stated. Conduct such as this surely needs no comment.

That the book is not of the "ridiculous" nature, and utterly useless kind, asserted by *The Jurist*, even I may venture to contend, not only from the ample notices of, and the decisive opinion expressed upon, it by the *Law Magazine* and *Law Times*, but from the numerous letters respecting it which I have received from several of the most distinguished lawyers of the present day, including most of the law Lords, as also from judges and leading advocates, who speak in high terms of its value to the profession, especially to students, and express themselves in a manner very satisfactory to me as regards the execution of the work, evincing, moreover, a great desire for its completion. I cannot suppose that all these distinguished men have united in a band to deceive me, or that they would voluntarily express sentiments which were the reverse of what they really entertained. The book itself can never be profitable to me in a pecuniary sense, and its completion will entail an immensity of labour, added to the discharge of official duties. I have undertaken it solely from a belief that it will be beneficial to the profession—an opinion strongly expressed by those distinguished men who have assisted me during the completion of the first part, by the revision of their judgments, by contributing certain portions, and by their advice generally as to the mode of carrying it out.

I should have thought that any liberal and high-minded editor of a legal periodical would have been disposed to aid in a work of this description, rather than to endeavour to do all in his power to defeat and disparage the attempt. But such is not the spirit which animates *The Jurist*, as its treatment of other writers more deserving than myself abundantly proves. In the present instance, however, I do believe that *The Jurist* has fairly eclipsed all its former achievements of this kind.

I only heard of your strictures through a portion of them being extracted in a letter to *The Solicitors' Journal*. And as after repeated and anxious inquiries

I could not discover any person who now takes in *The Jurist*, I first saw the "misrepresentation"—I cannot call it the "review"—alluded to on Friday last.

I am, Sir,

Your obedient servant,

GEORGE HARRIS.

Court of Bankruptcy, Manchester,
Jan. 8, 1866.

[The above letter, and one still more bloodthirsty, in which Mr. Harris demands "our" name, and threatens the extremest penalties of the law in default of an ample and satisfactory apology, have compelled us to revise our notice of the "*Principia*," and the result has been the discovery of three misprints, viz. in line 10 of the 2nd column of our page 467,—“high rank among those *means* which have occupied the study of the learned,” where (as the next line shews) “*means*” should be “*sciences*,” in line 30 of the same column,—“and [by] which alone reason is acknowledged,” where “by” is omitted; and in line 54 of the same column,—“In most instances references are made to authorities. ‘When an authority is [not] quoted, the author is of course himself responsible for the correctness of the principle enunciated,’” where, as Mr. Harris complains, “not” is omitted. We regret these misprints for our own sake, but in each case the error is obvious from the context, and the effect is in no degree to aggravate the case against the book.

The “pretended extract of a passage nowhere to be found in the book,” is given, with the reference, at p. 466 of our review, in the very words and letters in which it appears at p. 193 of the “*Principia*,” being the first paragraph of that page, and is a gem, with which we crave leave again to adorn our columns:—

“1. Executors and administrators are persons who are by law authorised and empowered to stand in the place of, and to represent, so far as the management and disposal of their property is concerned, certain deceased persons, who have either by will delegated to them this trust, or on whom it has been imposed by the authority of the law.”

If we had been noticing a book designed for the use of mature lawyers, we might have been content to allow the samples we had culled to speak for themselves; but in dealing with a book addressed to inexperienced students, which is only fitted to waste their time, and disgust them with the study, it is necessary to add a word of warning. If we needed any confirmation of our opinion, that the book is ridiculous, it is afforded by the author's ridiculous letter.]

THE INTENDED REPORT OF THE COMMISSION ON CAPITAL PUNISHMENT.

To the Queen's Most Excellent Majesty.

WE, your Majesty's commissioners appointed “to inquire into the provisions and operations of the laws now in force in the United Kingdom, under and by virtue of which the punishment of death may be inflicted upon persons convicted of certain crimes, and also into the manner in which capital sentences are carried into execution, and to certify to your Majesty, under our hands and seals, or under the seals of any five or more of us, our several proceedings in the premises, and at the same time to report to your Majesty our opinion whether any and what alteration is desirable in such laws, or any of them, or in the manner in which such sentences are carried into execution,” humbly report as follows:—

1. We have been occupied a considerable time in taking evidence upon the questions referred to us.

Many witnesses have been examined, and a careful summary of their evidence precedes this Report.

In addition to this oral testimony, certain questions have been addressed to, and answers received from, nearly all the nations of Europe, and some of the States of the United States of America, with regard to the laws relating to the punishment of death existing in those countries respectively.

The opinions of all her Majesty's judges in England, Ireland, and Scotland, as well as of other eminent criminal lawyers, have been requested upon the expediency of making any alteration in the laws under which the punishment of death may now be inflicted upon persons convicted of certain crimes.

In answer to this request, some of the judges have sent in statements of their views, while others have attended before the commission, and verbally stated their opinions. The whole of the evidence, both oral and documentary, will be found in the Appendix.

2. The commissioners forbear to enter into the abstract question of the expediency of abolishing or maintaining capital punishment, on which subject differences of opinion exist among them; but they are all of opinion that certain alterations ought to be made in the existing law.

3. The only crimes now practically punishable with death in the United Kingdom are treason and murder; we say *practically*, because in Scotland there remain many other offences which are still, in point of law, liable to be so punished, though in fact such a case never occurs. We strongly recommend that this anomaly be no longer allowed to exist, and that all such obsolete laws be repealed.

A list of these offences will be found in the Appendix.

4. We have then, first, to consider whether, assuming capital punishment to be retained, we should recommend any change in its present application to the crime of treason; and upon this point we have come to the conclusion that no alteration is required. The statute of the 11 & 12 Vict. c. 12, commonly called the Treason Felony Act, without in any way abrogating the ancient law upon the subject, has introduced a new and more merciful law, which, in all but cases of extreme gravity, will probably supersede the former. The maximum punishment under this act is penal servitude for life, which seems sufficiently severe in cases of constructive treason, unaccompanied by violence. With respect to treason of the latter character, we are of opinion that the extreme penalty must remain.

5. We now arrive at the consideration of the crime of murder, and its punishment, and in treating this difficult question we think it convenient briefly to refer, in the first instance, to the existing state of the law.

6. By the law, murder is the unlawfully killing another with malice aforethought, and this definition appears to us to be correct in principle.

Unfortunately these words have not been confined to express malice aforethought, or, as it is sometimes called, malice in fact, but have received a less natural construction, which has long been adopted as the settled law of the land. It has been held that malice, in its legal sense, imports nothing more than a wicked intention to do injury to the person of another, without any just cause or excuse, and that where a man is killed in consequence of any such wicked intention the law will infer malice aforethought, though no express enmity or preconceived design can be shewn; not, indeed, a particular, but a general, malice aforethought, arising from the extreme depravity of disposition shewn by the act. This doctrine of implied malice aforethought goes even beyond this, and is car-

ried to such an extent that the law always infers it when a person in the act of committing a felony, even of a trifling nature, kills another, though there may be, in fact, no premeditation, and no intention to kill, or do serious injury.

When homicide is committed in the perpetration of crimes of great enormity, such as those enumerated in clause 12, this inference may be not improperly drawn.

7. The extreme severity of this construction has been somewhat mitigated by the law of manslaughter, which is defined to be the unlawful killing of another without malice express or implied. In order to reduce the crime from murder to manslaughter, the law allows evidence of provocation to be given to rebut the inference of malice, which would otherwise be drawn from the act of killing. Here, however, again certain arbitrary rules have been introduced into the law, which most materially restrict its beneficial operations. It has been established by the decisions of our Courts, that no provocation by words, looks, or gestures, however contemptuous and insulting, nor by any trespass merely against lands or goods, is sufficient to free the party killing from the guilt of murder, if he kills with a deadly weapon, or in any manner shewing an intention to kill, or do grievous bodily harm. In these cases, though the suddenness of the provocation may rebut in point of fact the express malice aforethought, it is not allowed, on account of its supposed insignificance, to overcome the general malice aforethought, which is implied by the law, from the wickedness and cruelty of the deed. Without entering into the many nice and subtle distinctions which prevail upon this subject, it is enough to say that the practical result of this state of things is most unsatisfactory. A man who, in a sudden fit of passion, aroused by insult to himself or his wife, kills the person who offers the insult, is by law guilty of the same crime, and liable to the same punishment, as the assassin who has long meditated and brooded over his crime. A great majority of the witnesses whom we have examined have expressed a strong opinion that this branch of our criminal law requires revision and amendment, at least so far as the punishment is concerned; and we have unanimously arrived at the same conclusion.

8. We proceed, therefore, to offer such recommendations as we think expedient for altering the present law of murder. It appears to us that there are two modes in which the change may be effected.

9. The first plan is to abrogate altogether the existing law of murder, and to substitute a new definition of that crime, confining it to felonious homicides of great enormity, and leaving all those which are of a less heinous description in the category of manslaughter.

10. The other plan is one which has been extensively acted upon in the United States of America, where the common law of England is in force; this leaves the definition of murder and the distinction between that crime and manslaughter untouched, but divides the crime of murder into two classes or degrees, solely with the view of confining the punishment of death to the first or higher degree.

11. We have given both these plans our serious consideration, and we are of opinion that the required change may be best effected by the latter, which involves no disturbance of the present distinction between murder and manslaughter, which does not make it necessary to remodel the statutes relating to attempt to murder, and does not interfere with the operation of those treaties with foreign powers which provide for the extradition of fugitives accused of that crime. The object proposed can be attained by a short and simple enactment, providing that no murder shall be

punished with death, except such as are particularly therein mentioned.

These should be called murders of the first degree; all other murders should be called murders of the second degree, and punished as hereinafter recommended.

12. We recommend, therefore,—

(1). That the punishment of death be retained for all murders deliberately committed with express malice aforethought, such malice to be found as a fact by the jury.

(2). That the punishment of death be also retained for all murders committed in, or with a view to, the perpetration, or escape after the perpetration, or attempt at perpetration, of any of the following felonies:—murder, arson, rape, burglary, robbery, or piracy.

(3). That in all other cases of murder the punishment be penal servitude for life, or for any period not less than seven years, at the discretion of the Court.

13. Our attention has been called to the frequent failures of justice in cases of infanticide.

The crime of infanticide, as distinguished from murder in general, is not known to the English law. The moment a child is born alive it is as much under the protection of the law as an adult.

14. We have considered whether the failure of justice, which, undoubtedly, often occurs in such cases, may now be obviated by some change in the law which shall add to the protection of new-born children. The principal obstacle which now prevents the due enforcement of the law is the extreme difficulty of giving positive proof that the child alleged to have been murdered was completely born alive.

15. We have given this important and difficult subject our serious attention, and we have arrived at the opinion that an act should be passed making it an offence, punishable with penal servitude, or imprisonment at the discretion of the Court, unlawfully and maliciously to inflict grievous bodily harm or serious injury upon a child during its birth, or within seven days afterwards, in case such child has subsequently died. No proof that the child was completely born alive should be required. With respect to the offence of concealment of birth, we think that no person should be liable to be convicted of such offence upon an indictment for murder, but should be tried upon a separate indictment. The accused should not be entitled to be acquitted in either of the above cases if it should be proved on the trial that the offence amounted to murder or manslaughter.

16. There is one point upon which the witnesses whom we have examined are almost unanimous, viz. that the power of directing sentence of death to be recorded, should be restored to the judges. We think this change desirable.

17. Upon another important point there is also a great preponderance of opinion against the present state of the law. The witnesses whom we have examined are, with very few exceptions, in favour of the abolition of the present system of public executions, and it seems impossible to resist such a weight of authority. We, therefore, recommend that an act be passed putting an end to public executions, and directing that sentence of death shall be carried out within the precincts of the prison, under such regulations as may be considered necessary to prevent abuse, and satisfy the public that the law has been complied with.

18. There are other questions of great importance upon which we have taken evidence, viz.—

(1). The propriety of allowing appeal on matters of fact to a court of law in criminal cases.

- (2). The mode in which the Crown is advised to exercise the prerogative of mercy by the Home Secretary.
- (3). The present state of the law as to the nature and degree of insanity which is held to relieve the accused from penal responsibility in criminal cases.

It is obvious that these difficult questions are not confined to capital crimes only, but pervade the whole administration of the criminal law. They, therefore, required a more general and comprehensive treatment than the terms of the commission under which we act will admit. We think, therefore, that while we should not be justified in making any recommendation to your Majesty on these points, we shall fail in our duty did we not humbly solicit your Majesty's attention to them as requiring further investigation.

All which we humbly submit to your Majesty's royal consideration.

REGULÆ GENERALES.

MICH. VACATION, 1865.

THE Commissioners of her Majesty's Treasury, and the Right Hon. Sir Frederick Pollock, Knight, Lord Chief Baron of her Majesty's Court of Exchequer, and Sir George Bramwell, Knight, and Sir William Fry Channell, Knight, Barons of the said Court, do hereby, in pursuance and execution of the powers in that behalf contained in the Crown Suits, &c. Act, 1865, the Common-law Courts (Fees) Act, 1865, and of every or any other power enabling them in this behalf, appoint and direct:—

1. That the fees set forth in the Schedule (A.), hereafter mentioned, shall be charged in proceedings in suits, commenced by English information in this court, and such fees shall be collected not in money, but by means of stamps, denoting the amount of such fees.

2. Such stamps shall be stamped or affixed, at the expense of the parties liable to pay the fees, on or to the vellum, parchment, or paper on which the proceedings, in respect whereof such fees are payable, are written or printed, or which may be otherwise used in reference to such proceedings; and where any of such fees are payable in respect of any matter or thing to be done in the Office of the Queen's Remembrancer, and it has not been customary to use in reference to such matter or thing, any written or printed document or paper whereupon the stamps could be stamped or affixed, the party or his solicitor requiring such matter or thing to be so done, shall make application for the same by a short note or memorandum in writing, and a stamp, denoting the amount of the fee so payable, shall be stamped on or affixed to such note or memorandum.

3. Every officer in the Queen's Remembrancer's Office, who shall receive any document to which a stamp shall be affixed, pursuant to the provisions hereinbefore contained, shall immediately, upon the receipt of such document, cancel or deface the stamp thereon by obliterating the same by means of a stamp and printing ink, shewing the date of cancellation, and no such document shall be filed or delivered out, until the stamp thereon shall have been cancelled or defaced in manner aforesaid.

4. Where stamps impressed upon adhesive paper are used, care should be taken so to select the stamps required to make up the amount to be affixed to any document, as that no greater number of stamps may be affixed thereto than is actually necessary.

5. These rules shall come into operation on the 1st January, 1866.

The Schedule (A.), above referred to.

	£	s.	d.
For every oath or declaration of a witness examined before the Queen's Remembrancer or other officer	0	2	0
Upon every application to inspect affidavits and depositions, including the inspections	0	3	0
For making all office and other copies per folio of seventy-two words	0	0	4
The fee of 6d. shall be charged and taken in respect of any odd sum of 4d. or 8d.			
For filing every information	1	0	0
Upon entering every appearance, if not more than three defendants	0	7	0
If more than three and not more than six defendants	0	14	0
And the same proportion for every like number of defendants.			
For every certificate	0	5	0
For marking every copy of an information or other document to be served or for delivery	0	5	0
For every writ of distringas, subpoena, or attachment	0	5	0
For sealing every other writ	1	0	0
Upon every application for a search for a record, and for searching	0	2	0
Upon every application to inspect a record, and for inspecting the same	0	5	0
Upon every application to inspect exhibits, if occupied not more than one hour	0	5	0
If occupied more than one hour, per diem	0	10	0
Upon every application for the officer's attendance in another court, per diem, and for his attendance, besides reasonable expenses of the officer	1	0	0
Upon the like application for attendance in the Court of Exchequer, per diem	0	10	0
For filing supplemental statements, or statement for revivor	0	10	0
For filing answer	0	5	0
For filing every affidavit, including schedules and exhibits, or other documents not named in this schedule	0	2	0
For amending every record of an information	0	10	0
For every decree or decretal order made by the Court on the original hearing of a cause, or on further directions	2	0	0
For every order or motion of course	0	5	0
For every other order, 5s., but if more than five folios, 1s. per folio extra.			
On every petition of rehearing	1	0	0
For every warrant or summons	0	3	0
For signing every report, if not more than five folios	0	10	0
If more than five folios, 1s. per folio extra.			
Upon the taxation of every bill of costs as taxed, where the amount shall not exceed 20l.	0	10	0
For every additional 20l. or fractional part thereof, a further fee of	0	10	0
On references to the Queen's Remembrancer, per hour	0	10	0

Schedule (B).

Fees to be received under the 30th section of the Crown Suits, &c. Act, 1865.		£	s.	d.
The Queen's Remembrancer, or such other officer of the court as may be authorised to take evidence as mentioned in the Crown Suits, &c. Act, sect. 21, shall be entitled to receive, when the examination is at the office, for every hour in which he is employed in the examination of witnesses, the sum of		0	10	0
An examiner especially appointed by an order of the court or a judge, for every day in which he is bonâ fide employed in the examination of witnesses, the sum of		3	3	0
If at a distance from his place of residence, 1l. 1s. per diem for his expenses, exclusive of travelling.				

For travelling expenses, the amount actually and reasonably paid £ s. d., but in no case to exceed 1s. per mile one way.

Given under our hands at the Treasury Chambers, Whitehall, this 18th day of December, 1865.

E. H. KNATCHBULL-HUGESSEN.
W. P. ADAM.

We, the undersigned, Lord Chief Baron, and two Barons of her Majesty's Court of Exchequer, do hereby signify our concurrence in the before-mentioned rules and table of fees, and do appoint such fees to be taken in conformity with the provisions of the aforesaid act:—

FRED. POLLOCK, Lord Chief Baron of her Majesty's Court of Exchequer.

G. BRAMWELL, } Barons of her Majesty's Court
W. F. CHANNELL, } of Exchequer.

In pursuance of an act passed in the session of Parliament held in the 15 & 16 Vict. c. 73, intituled "An Act to make Provision for a permanent Establishment of Officers to perform the Duties at Nisi Prius in the Superior Courts of Common Law, and for the Payment of such Officers and the Judges' Clerks by Salaries, and to abolish certain Offices in those Courts," we, the undersigned, have caused the under-mentioned altered and amended table of fees to be prepared, specifying the fees proper to be demanded and taken by the associates in the Superior Courts of Common Law, namely:—

	£	s.	d.
On entering any cause for trial	1	0	0
On receiving the record	1	0	0
On returning the postea	1	0	0
On re-entering and receiving the record of any cause which has been withdrawn or struck out	1	0	0
On receiving a writ of subpoena to attend any court	1	0	0
For attendance at any court on a writ of subpoena for every day after the first day	1	0	0

All other fees than those before mentioned are hereby abolished, and are not to be taken by any person in the Associates' Offices under any pretence whatever.

A. E. COCKBURN, Lord Chief Justice of the Court of Queen's Bench.

W. ERLE, Lord Chief Justice of the Court of Common Pleas.

FREDK. POLLOCK, Lord Chief Baron of the Court of Exchequer.

G. BRAMWELL, Baron of the Court of Exchequer.

COLIN BLACKBURN, Justice of the Court of Queen's Bench.

MONTAGUE SMITH, Justice of the Court of Common Pleas.

RULES AND REGULATIONS FOR HER MAJESTY'S COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

WHEREAS by an act passed in the session of Parliament holden in the 20 & 21 Vict. c. 85, it is provided, that there shall be a court of record, to be called "The Court for Divorce and Matrimonial Causes;" and whereas by the said act it is further provided, that the said Court shall make such rules and regulations concerning the practice and procedure under the said act as it may from time to time consider expedient, and shall have full power from time to time to revoke or alter the same; and whereas by another act passed in the session of Parliament holden in the 23 & 24 Vict. c. 144, it is enacted, that it shall be lawful for

the Judge Ordinary of the Court for Divorce and Matrimonial Causes alone to exercise all powers and authority whatever hitherto exercised by the full Court.

Now I, Sir James Plaisted Wilde, Judge Ordinary of her Majesty's Court for Divorce and Matrimonial Causes, do revoke all rules and regulations heretofore made and issued concerning the practice and procedure in the said Court for Divorce and Matrimonial Causes, and do make the following rules and regulations in place thereof, to take effect on and after the 11th January, 1866.

Dated the 26th day of December, 1865.

(Signed) JAMES PLAISTED WILDE.

RULES, &c. MADE UNDER THE PROVISIONS OF STATS. 20 & 21 VICT. c. 85; 21 & 22 VICT. c. 108; 22 & 23 VICT. c. 61; 23 & 24 VICT. c. 144; 25 & 26 VICT. c. 81; 27 & 28 VICT. c. 44; AND 21 & 22 VICT. c. 93.

All rules and regulations heretofore made and issued for her Majesty's Court for Divorce and Matrimonial Causes, shall be revoked on and after the 11th January, 1866, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following rules and regulations shall take effect in her Majesty's Court for Divorce and Matrimonial Causes on and after the 11th January, 1866.

Petition.

1. Proceedings before the Court for Divorce and Matrimonial Causes shall be commenced by filing a petition. A form of petition is given in the Appendix, No. 1.

2. Every petition shall be accompanied by an affidavit made by the petitioner, verifying the facts of which he or she has personal cognisance, and deposing as to belief in the truth of the other facts alleged in the petition, and such affidavit shall be filed with the petition.

3. In cases where the petitioner is seeking a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the petitioner's affidavit, filed with his or her petition, shall further state, that no collusion or connivance exists between the petitioner and the other party to the marriage or alleged marriage.

Co-respondents.

4. Upon a husband filing a petition for dissolution of marriage, on the ground of adultery, the alleged adulterers shall be made co-respondents in the cause, unless the Judge Ordinary shall otherwise direct.

5. Application for such direction is to be made to the Judge Ordinary, on motion founded on affidavit.

6. If the names of the alleged adulterers, or either of them, should be unknown to the petitioner at the time of filing his petition, the same must be supplied as soon as known; and application must be made forthwith to one of the registrars to amend the petition by inserting such name therein, and the registrar to whom the application is made shall give his directions as to such amendment, and such further directions as he may think fit as to service of the amended petition.

7. The term "respondent," where the same is hereinafter used, shall include all co-respondents, so far as the same is applicable to them.

Citation.

8. Every petitioner who files a petition and affidavit shall forthwith extract a citation, under seal of the court, for service on each respondent in the cause. A form of citation is given in the Appendix, No. 2.

9. Every citation shall be written or printed on

parchment, and the party extracting the same, or his or her proctor, solicitor, or attorney, shall take it, together with a præcipe, to the registry, and there deposit the præcipe, and get the citation signed and sealed. A form of præcipe is given in the Appendix, No. 8. The address given in the præcipe must be within three miles of the General Post-office.

Service.

10. Citations to be served personally, when that can be done.

11. Service of a citation shall be effected by personally delivering a true copy of the citation to the party cited, and producing the original, if required.

12. To every person served with a citation shall be delivered, together with the copy of the citation, a certified copy of the petition, under seal of the court.

13. In cases where personal service cannot be effected, application may be made by motion to the Judge Ordinary, or to the registrars in his absence, to substitute some other mode of service.

14. After service has been effected, the citation, with a certificate of service indorsed thereon, shall be forthwith returned into and filed in the registry. The form of certificate of service is given in the Appendix, No. 4.

15. When it is ordered that a citation shall be advertised, the newspapers containing the advertisements are to be filed in the registry with the citation.

16. The above rules, so far as they relate to the service of citations, are to apply to the service of all other instruments requiring personal service.

17. Before a petitioner can proceed, after having extracted a citation, an appearance must have been entered by or on behalf of the respondents, or it must be shewn by affidavit, filed in the registry, that they have been duly cited, and have not appeared.

18. An affidavit of service of a citation must be substantially in the form given in the Appendix, No. 5, and the citation referred to in the affidavit must be annexed to such affidavit, and marked by the person before whom the same is sworn.

Appearance.

19. All appearances to citations are to be entered in the registry in a book provided for that purpose. The form of entry of appearance is given in the Appendix, No. 6.

20. An appearance may be entered at any time before a proceeding has been taken in default, or afterwards, as hereinafter directed, or by leave of the Judge Ordinary, or of the registrars in his absence, to be applied for by motion founded on affidavit.

21. Every entry of an appearance shall be accompanied by an address, within three miles of the General Post Office.

22. If a party cited wishes to raise any question as to the jurisdiction of the Court, he or she must enter an appearance under protest, and within eight days file in the registry his or her act on petition in extension of such protest, and on the same day deliver a copy thereof to the petitioner. After the entry of an absolute appearance to the citation, a party cited cannot raise any objection as to jurisdiction.

Interveners.

23. Application for leave to intervene in any cause must be made to the Judge Ordinary by motion, supported by affidavit.

24. Every party intervening must join in the proceedings at the stage in which he finds them, unless it is otherwise ordered by the Judge Ordinary.

Suits in Formâ Pauperis.

25. Any person desirous of prosecuting a suit in formâ pauperis is to lay a case before counsel, and

obtain an opinion that he or she has reasonable grounds for proceeding.

26. No person shall be admitted to prosecute a suit in formâ pauperis without the order of the Judge Ordinary; and, to obtain such order, the case laid before counsel, and his opinion thereon, with an affidavit of the party, or of his or her proctor, solicitor, or attorney, that the said case contains a full and true statement of all the material facts, to the best of his or her knowledge and belief, and an affidavit of the party applying as to his or her income or means of living, and that he or she is not worth 25*l.*, after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made.

27. Where a husband, admitted to sue as a pauper, neglects to proceed in a cause, he may be called upon by summons to shew cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs be paid.

Answer.

28. Each respondent who has entered an appearance may, within twenty-one days after service of citation on him or her, file in the registry an answer to the petition. A form of answer is given in the Appendix, No. 7.

29. Each respondent shall, on the day he or she files an answer, deliver a copy thereof to the petitioner, or to his or her proctor, solicitor, or attorney.

30. Every answer, which contains matter other than a simple denial of the facts stated in the petition, shall be accompanied by an affidavit made by the respondent, verifying such other or additional matter, so far as he or she has personal cognisance thereof, and deposing as to his or her belief in the truth of the rest of such other or additional matter, and such affidavit shall be filed with the answer.

31. In cases involving a decree of nullity of marriage, or of judicial separation, or of dissolution of marriage, or a decree in a suit of jactitation of marriage, the respondent, who is husband or wife of the petitioner, shall, in the affidavit filed with the answer further state that there is not any collusion or connivance between the deponent and the petitioner.

Further Pleadings.

32. Within fourteen days from the filing and delivery of the answer, the petitioner may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder, or any subsequent pleading.

33. A copy of every reply and subsequent pleading shall, on the day the same is filed, be delivered to the opposite parties, or to their proctor, solicitor, or attorney.

General Rules as to Pleadings.

34. Either party desiring to alter or amend any pleading, must apply by motion to the Court for permission to do so, unless the alteration or amendment be merely verbal, or in the nature of a clerical error, in which case it may be made by order of the Judge Ordinary, or of one of the registrars in his absence, obtained on summons.

35. When a petition, answer, or other pleading has been ordered to be altered or amended, the time for filing and delivering a copy of the next pleading shall be reckoned from the time of the order having been complied with.

36. A copy of every pleading, shewing the alterations and amendments made therein, shall be delivered to the opposite parties, on the day such alterations and amendments are made in the pleadings filed in the registry; and the opposite parties, if they have already pleaded in answer thereto, shall be at liberty to amend

such answer within four days, or such further time as may be allowed for the purpose.

37. If either party in the cause fail to file or deliver a copy of the answer, reply, or other pleading, or to alter or amend the same, or to deliver a copy of any altered or amended pleading, within the time allowed for the purpose, the party to whom the copy of such answer, reply, or other pleading, or altered or amended pleading, ought to have been delivered, shall not be bound to receive it, and such answer, reply, or other pleading shall not be filed, or be treated or considered as having been filed, or be altered or amended, unless by order of the Judge Ordinary, or of one of the registrars, to be obtained on summons. The expense of obtaining such order shall fall on the party applying for it, unless the Judge Ordinary or registrar shall otherwise direct.

38. Applications for further particulars of matters pleaded are to be made to the Judge Ordinary, or to one of the registrars in his absence, by summons, and not by motion.

Service of Pleadings, &c.

39. It shall be sufficient to leave all pleadings and other instruments, personal service of which is not expressly required by these rules and regulations, at the respective addresses furnished by, or on behalf of, the several parties to the cause.

Mode of Trial.

40. When the pleadings, on being concluded, have raised any questions of fact, the petitioner, within fourteen days from the filing of the last pleading, or at the expiration of that time, on the next day appointed for hearing motions in this court, or in case the petitioner should fail to do so at such time, either of the respondents on whose behalf such questions have been raised, may apply to the Judge Ordinary by motion to direct the truth of such questions of fact to be tried by a special or common jury.

Questions of Fact for the Jury.

41. Whenever the Judge Ordinary directs the issues of fact in a cause to be tried by a jury, the questions of fact raised by the pleadings are to be briefly stated in writing by the petitioner, and settled by one of the registrars. A form is given in the Appendix, No. 8.

42. Should the petitioner fail to prepare and deposit the questions for settlement in the registry within fourteen days after the Judge Ordinary has directed the mode of trial, either of the respondents on whose behalf such questions have been raised shall be at liberty to do so.

43. After the questions have been settled by the registrar, the party who has deposited the same shall deliver a copy thereof, as settled to each of the other parties to be heard on the trial of the cause, and either of such parties shall be at liberty to apply to the Judge Ordinary, by summons, within eight days, or at the expiration of that time on the next day appointed for hearing summonses in this court, to alter or amend the same, and his decision shall be final.

Setting down the Cause for Trial or Hearing.

44. In cases to be tried by a jury, the petitioner, after the expiration of eight days from the delivery of copies of the questions for the jury to the opposite parties, or from alteration or amendment of the same, in pursuance of the order of the Judge Ordinary, shall file such questions as finally settled in the registry, and at the same time set down the cause as ready for trial, and on the same day give notice of his having done so to each party for whom an appearance has been entered.

45. In cases to be heard without a jury, the petitioner shall, after obtaining directions as to the mode

of hearing, set the cause down for hearing, and on the same day give notice of his having done so to each party in the cause for whom an appearance has been entered.

46. If the petitioner fail to file the questions for the jury, or to set down the cause for trial or hearing, or to give due notice thereof, for the space of one month, after directions have been given as to the mode in which the cause shall be tried or heard, either of the respondents entitled to be heard at such trial or hearing may file the questions for the jury, and set the cause down for trial or hearing, and shall on the same day give notice of his having done so to the petitioner, and to each of the other parties to the cause for whom an appearance has been entered.

47. A copy of every notice of the cause being set down for trial or hearing shall be filed in the registry, and the cause shall come on in its turn, unless the Judge Ordinary shall otherwise direct.

Trial or Hearing.

48. No cause shall be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the consent of all parties to the suit.

49. The registrar shall enter in the court book the finding of the jury and the decree of the Court, and shall sign the same.

50. Either of the respondents in the cause, after entering an appearance, without filing an answer to the petition in the principal cause, may be heard in respect of any question as to costs, and a respondent, who is husband or wife of the petitioner, may be heard also in respect to any question as to custody of children, but a respondent who may be so heard is not at liberty to bring in affidavits touching matters in issue in the principal cause, and no such affidavits can be read or made use of as evidence in the cause.

Evidence taken by Affidavit.

51. When the Judge Ordinary has directed that all or any of the facts set forth in the pleadings be proved by affidavits, such affidavits shall be filed in the registry within eight days from the time when such direction was given, unless the Judge Ordinary shall otherwise direct.

52. Counter affidavits as to any facts to be proved by affidavit may be filed within eight days from the filing of the affidavits which they are intended to answer.

53. Copies of all such affidavits and counter affidavits shall, on the day the same are filed, be delivered to the other parties to be heard on the trial or hearing of the cause, or to their proctors, solicitors, or attorneys.

54. Affidavits in reply to such counter affidavits cannot be filed without permission of the Judge Ordinary, or of the registrars in his absence.

55. Application for an order for the attendance of a deponent for the purpose of being cross-examined in open court shall be made to the Judge Ordinary, on summons.

Proceedings by Petition.

56. Any party to a cause who has entered an appearance may apply on summons to the Judge Ordinary, or in his absence to the registrars, to be heard on his petition touching any collateral question which may arise in a suit.

57. The party to whom leave has been given to be heard on his petition shall, within eight days, file his act on petition in the registry, and on the same day deliver a copy thereof to such parties in the cause as are required to answer thereto.

58. Each party to whom a copy of an act on petition

is delivered shall, within eight days after receiving the same, file his or her answer thereto in the registry, and on the same day deliver a copy thereof to the opposite party, and the same course shall be pursued with respect to the reply, rejoinder, &c., until the act on petition is concluded.

59. A form of act on petition, answer, and conclusion is given in the Appendix, No. 9.

60. Each party to the act on petition shall, within eight days from that on which the last statement in answer is filed, file in the registry such affidavits and other proofs as may be necessary in support of their several averments.

61. After the time for filing affidavits and proofs has expired, the party filing the act on petition is to set down the petition for hearing in the same manner as a cause; and in the event of his failing to do so within a month, any party who has filed an answer thereto may set the same down for hearing, and the petition will be heard in its turn with other causes to be heard by the Judge Ordinary without a jury.

New Trial and Hearing.

62. An application to the Judge Ordinary for a new trial of issues of fact tried by a jury, or for a rehearing of a cause, may be made by motion within fourteen days from the day on which the issues were tried or the cause was heard, if the Judge Ordinary be then sitting to hear motions, if not, on the first day appointed for hearing motions in this court after the expiration of the fourteen days.

Petition for Reversal of Decree of Judicial Separation.

63. A petition to the Court for the reversal of a decree of judicial separation must set out the grounds on which the petitioner relies. A form of such petition is given in the Appendix, No. 10.

64. Before such a petition can be filed, an appearance on behalf of the party praying for a reversal of the decree of judicial separation must be entered in the cause in which the decree has been pronounced.

65. A certified copy of such a petition, under seal of the court, shall be delivered personally to the party in the cause in whose favour the decree has been made, who may within fourteen days file an answer thereto in the registry, and shall on the day on which the answer is filed deliver a copy thereof to the other party in the cause, or to his or her proctor, solicitor, or attorney.

66. All subsequent pleadings and proceedings arising from such petition and answer shall be filed and carried on in the same manner as before directed in respect of an original petition for judicial separation and answer thereto, so far as such directions are applicable.

Demurrer.

67. All demurrers are to be set down for hearing in the same manner as causes, and will come on in their turn with other causes to be heard by the Judge Ordinary without a jury, unless the Judge Ordinary shall direct otherwise.

Intervention of the Queen's Proctor.

68. The Queen's proctor shall, within fourteen days after he has obtained leave to intervene in any cause, enter an appearance and plead to the petition; and on the day he files his plea in the registry shall deliver a copy thereof to the petitioner, or to his proctor, solicitor, or attorney.

69. All subsequent pleadings and proceedings in respect to the Queen's proctor's intervention in a cause shall be filed and carried on in the same manner as before directed in respect of the pleadings and proceedings of the original parties to the cause.

Shewing Cause against a Decree.

70. Any person wishing to shew cause against making

absolute a decree nisi for dissolution of a marriage shall enter an appearance in the cause in which such decree nisi has been pronounced.

71. Every such person shall at the time of entering an appearance, or within four days thereafter, file affidavits setting forth the facts upon which he relies.

72. Upon the same day on which such person files his affidavits he shall deliver a copy of the same to the party in the cause in whose favour the decree nisi has been pronounced.

73. The party in the cause in whose favour the decree nisi has been pronounced, may, within eight days after delivery of the affidavits, file affidavits in answer, and shall, upon the day such affidavits are filed, deliver a copy thereof to the person shewing cause against the decree being made absolute.

74. The person shewing cause against the decree nisi being made absolute, may within eight days file affidavits in reply, and shall upon the same day deliver copies thereof to the party supporting the decree nisi.

75. No affidavits are to be filed in rejoinder to the affidavits in reply without permission of the Judge Ordinary, or of one of the registrars in his absence.

76. The questions raised on such affidavits shall be argued in such manner and at such time as the Judge Ordinary may, on application by motion, direct; and if he thinks fit to direct any controverted questions of fact to be tried by a jury, the same shall be settled and tried in the same manner, and subject to the same rules as any other issue tried in this court.

Appeals to the full Court.

77. An appeal to the full Court from a decision of the Judge Ordinary must be asserted in writing, and the instrument of appeal filed in the registry, within the time allowed by law for appealing from such decision; and on the same day on which the appeal is filed, notice thereof, and a copy of the appeal, shall be delivered to each respondent in the appeal, or to his or her proctor, solicitor, or attorney. A form of instrument of appeal is given in the Appendix, No. 11.

78. The appellant, within ten days after filing his instrument of appeal, or within such further time as may be allowed by the Judge Ordinary, or by the registrars in his absence, shall file in the registry his case in support of the appeal in triplicate, and on the same day deliver a copy thereof to each respondent in the appeal, or to his proctor, solicitor, or attorney, who, within ten days from the time of such filing and delivery, or from such further time as may be allowed for the purpose by the Judge Ordinary, or the registrars in his absence, shall be at liberty to file in the registry a case against the appeal, also in triplicate, and the respondent shall on the same day deliver a copy thereof to the appellant, or to his proctor, solicitor, or attorney.

79. After the expiration of ten days from the time when the respondent has filed his case, or, if he has filed none, from the time allowed him for the purpose, the appeal shall stand for hearing at the next sittings of the full Court, and will be called on in its turn, unless otherwise directed.

Decree absolute.

80. All applications to make absolute a decree nisi for dissolution of a marriage must be made to the Court by motion. In support of such applications it must be shewn by affidavit, filed with the case for motion, that search has been made in the proper books at the registry up to within two days of the affidavit being filed, and that at such time no person had obtained leave to intervene in the cause, and that no appearance had been entered, nor any affidavits filed on behalf of any person wishing to shew cause against the decree nisi being made absolute; and in case leave

to intervene had been obtained, or appearance entered, or affidavits filed on behalf of any such person, it must be shewn by affidavit what proceedings, if any, had been taken thereon; but it shall not be necessary to file a copy of the decree nisi. A form of affidavit is given in the Appendix, No. 12.

Alimony.

81. The wife, being the petitioner in the cause, may file her petition for alimony pending suit at any time after the citation has been duly served on the husband, or after order made by the Judge Ordinary to dispense with such service, provided the factum of marriage between the parties is established by affidavit previously filed.

82. The wife, being the respondent in a cause, after having entered an appearance, may also file her petition for alimony pending suit.

83. A form of petition for alimony is given in the Appendix, No. 13.

84. The husband shall, within eight days after the filing and delivery of a petition for alimony, file his answer thereto upon oath.

85. The husband, being respondent in the cause, must enter an appearance before he can file an answer to a petition for alimony.

86. The wife, if not satisfied with the husband's answer, may object to the same as insufficient, and apply to the Judge Ordinary on motion to order him to give a further and fuller answer, or to order his attendance on the hearing of the petition for the purpose of being examined thereon.

87. In case the answer of the husband alleges that the wife has property of her own, she may, within eight days, file a reply on oath to that allegation; but the husband is not at liberty to file a rejoinder to such reply without permission of the Judge Ordinary, or of one of the registrars in his absence.

88. A copy of every petition for alimony, answer, and reply, must be delivered to the opposite party, or to his or her proctor, solicitor, or attorney, on the day the same is filed.

89. After the husband has filed his answer to the petition for alimony (subject to any order as to costs), or, if no answer is filed, at the expiration of the time allowed for filing an answer, the wife may proceed to examine witnesses in support of her petition, and apply by motion for an allotment of alimony pending suit, notice of the motion, and of the intention to examine witnesses, being given to the husband, or to his proctor, solicitor, or attorney, four days previously to the motion being heard and the witnesses examined, unless the Judge Ordinary shall dispense with such notice.

90. No affidavits can be read or made use of as evidence in support of, or in opposition to, the averments contained in a petition for alimony, or in an answer to such a petition, or in a reply, except such as may be required by the Judge Ordinary or by one of the registrars.

91. A wife who has obtained a final decree of judicial separation in her favour, and has previously thereto filed her petition for alimony pending suit, on such decree being affirmed on appeal to the full Court, or after the expiration of the time for appealing against the decree, if no appeal be then pending, may apply to the Judge Ordinary by motion for an allotment of permanent alimony; provided that she shall, eight days at least before making such application, give notice thereof to the husband, or to his proctor, solicitor, or attorney.

92. A wife may at any time after alimony has been allotted to her, whether alimony pending suit or permanent alimony, file her petition for an increase of

the alimony allotted by reason of the increased faculties of the husband, or the husband may file a petition for a diminution of the alimony allotted by reason of reduced faculties; and the course of proceeding in such cases shall be the same as required by these rules and regulations in respect of the original petition for alimony, and the allotment thereof, so far as the same are applicable.

93. Permanent alimony shall, unless otherwise ordered, commence and be computed from the date of the final decree of the Judge Ordinary, or of the full Court on appeal, as the case may be.

94. Alimony, pending suit, and also permanent alimony, shall be paid to the wife, or to some person or persons to be nominated in writing by her, and approved of by the Court, as trustee or trustees on her behalf.

Maintenance and Settlements.

95. Applications to the Court to exercise the authority given by sects. 32 and 45 of the 20 & 21 Vict. c. 85, and by sect. 5 of the 22 & 23 Vict. c. 61, are to be made in a separate petition, which must, unless by leave of the judge, be filed as soon as by the said statutes such applications can be made, or within one month thereafter.

96. In cases of application for maintenance, under sect. 32 of the 20 & 21 Vict. c. 85, such petition may be filed as soon as a decree nisi has been pronounced, but not before.

97. A certified copy of such petition, under seal of the court, shall be personally served on the husband or wife (as the case may be), and on the person or persons who may have any legal or beneficial interest in the property in respect of which the application is made, unless the Judge Ordinary, on motion, shall direct any other mode of service, or dispense with service of the same on them, or either of them.

98. The husband or wife (as the case may be), and the other person or persons (if any) who are served with such petition, within fourteen days after service, may file his, her, or their answer on oath to the said petition, and shall on the same day deliver a copy thereof to the opposite party, or to his proctor, solicitor, or attorney.

99. Any person served with the petition, not being a party to the principal cause, must enter an appearance before he or she can file an answer thereto.

100. Within fourteen days from the filing the answer, the opposite party may file a reply thereto, and the same period shall be allowed for filing any further pleading by way of rejoinder.

101. Such pleadings, when completed, shall in the first instance be referred to one of the registrars, who shall investigate the averments therein contained, in the presence of the parties, their proctors, solicitors, or attorneys, and who, for that purpose, shall be at liberty to require the production of any documents referred to in such pleadings, or to call for any affidavits, and shall report in writing to the Court the result of his investigation, and any special circumstances to be taken into consideration with reference to the prayer of the petition.

102. The report of the registrar shall be filed in the registry by the husband or wife on whose behalf the petition has been filed, who shall give notice thereof to the other parties heard by the registrar; and either of the parties, within fourteen days after such notice has been given, if the Judge Ordinary be then sitting to hear motions, otherwise on the first day appointed for motions after the expiration of fourteen days, may be heard by the Judge Ordinary on motion, in objection to the registrar's report, or may apply on motion for a decree or order to confirm the same, and to carry out the prayer of the petition.

103. The costs of a wife of and arising from the said petition or answer, shall not be allowed on taxation of costs against the husband, before the final decree in the principal cause, without direction of the Judge Ordinary.

Custody of and Access to Children.

104. Before the trial or hearing of a cause, a husband or wife who are parties to it may apply for an order with respect to the custody, maintenance, or education of or for access to children, issue of their marriage, to the Judge Ordinary, by motion founded on affidavit.

Guardians to Minors.

105. A minor above the age of seven years may elect any one or more of his or her next of kin, or next friends, as guardian, for the purpose of proceeding on his or her behalf as petitioner, respondent, or intervener in a cause. The form of an instrument of election is given in the Appendix, No. 14.

106. The necessary instrument of election must be filed in the registry, before the guardian elected can be permitted to extract a citation, or to enter an appearance on behalf of the minor.

107. When a minor shall elect some person or persons other than his or her next of kin, as guardian for the purposes of a suit, or when an infant (under the age of seven years) becomes a party to a suit, application, founded on affidavit, is to be made to one of the registrars, who will assign a guardian to the minor or infant for such suit.

108. It shall not be necessary for a minor, who, as an alleged adulterer, is made a co-respondent in a suit, to elect a guardian, or to have a guardian assigned to him for the purpose of conducting his defence.

Subpoenas.

109. Every subpoena shall be written or printed on parchment, and may include the names of any number of witnesses. The party issuing the same, or his or her proctor, solicitor, or attorney, shall take it, together with a præcipe, to the registry, and get it signed and sealed, and there deposit the præcipe. Forms of subpoena, Nos. 15 and 17, and forms of præcipe, Nos. 16 and 18, are given in the Appendix.

Writs of Attachment and other Writs.

110. Applications for writs of attachment, and also for writs of fieri facias and of sequestration, must be made to the Judge Ordinary by motion in court.

111. Such writs, when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the registry, with an office copy of the order, and, when approved and signed by one of the registrars, shall be sealed with the seal of the court, and it shall not be necessary for the Judge Ordinary, or for other judges of the court, to sign such writs.

112. Any person in custody under a writ of attachment may apply for his or her discharge to the Judge Ordinary, if the Court be then sitting; if not, then to one of the registrars, who for good cause shewn shall have power to order such discharge.

Notices.

113. All notices required by these rules and regulations, or by the practice of the Court, shall be in writing, and signed by the party, or by his or her proctor, solicitor, or attorney.

Service of Notices, &c.

114. It shall be sufficient to leave all notices and copies of pleadings and other instruments which by these rules and regulations are required to be given or delivered to the opposite parties in the cause, or

to their proctors, solicitors, or attorneys, and personal service of which is not expressly required at the address furnished as aforesaid by the petitioner and respondent respectively.

115. When it is necessary to give notice of any motion to be made to the Court, such notice shall be served on the opposite parties who have entered an appearance four clear days previously to the hearing of such motion, and a copy of the notice so served shall be filed in the registry with the case for motion, but no proof of the service of the notice will be required, unless by direction of the Judge Ordinary.

116. If an order be obtained on motion without due notice to the opposite parties, such order will be rescinded, on the application of the parties upon whom the notice should have been served; and the expense of and arising from the rescinding of such order shall fall on the party who obtained it, unless the Judge Ordinary shall otherwise direct.

117. When it is necessary to serve personally any order or decree of the Court, the original order or decree, or an office copy thereof, under seal of the court, must be produced to the party served, and annexed to the affidavit of service marked as an exhibit by the commissioner or other person before whom the affidavit is sworn.

Office Copies, Extracts, &c.

118. The registrars of the principal registry of the Court of Probate are to have the custody of all pleadings and other documents now or hereafter to be brought in or filed, and of all entries of orders and decrees made in any matter or suit depending in the Court for Divorce and Matrimonial Causes; and all rules and orders, and fees payable in respect of searches for, and inspection or copies of, and extracts from, and attendance, with books and documents, in the registry of the Court of Probate, shall extend to such pleadings and other documents brought in or filed, and all entries of orders and decrees made in the Court for Divorce and Matrimonial Causes, save that the length of copies and extracts shall in all cases be computed at the rate of seventy-two words per folio.

119. Office copies or extracts furnished from the registry of the Court of Probate will not be collated with the originals from which the same are copied, unless specially required. Every copy so required to be examined shall be certified under the hand of one of the principal registrars of the Court of Probate to be an examined copy.

120. The seal of the court will not be affixed to any copy which is not certified to be an examined copy.

Time fixed by these Rules.

121. The Judge Ordinary shall in every case in which a time is fixed by these rules and regulations for the performance of any act, or for any proceeding in default, have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.

122. To prevent the time limited for the performance of any act, or for any proceeding in default, from expiring before application can be made to the Judge Ordinary for an extension thereof, any one of the registrars may, upon reasonable cause being shewn, extend the time, provided that such time shall in no case be extended beyond the day upon which the Judge Ordinary shall next sit in chambers.

123. The time fixed by these rules and regulations for the performance of any act, or for any proceeding in a cause, shall in all cases be exclusive of Sundays, Christmas-day, and Good Friday.

Protection Orders.

124. Applications on the part of a wife, deserted by her husband, for an order to protect her earnings and property, acquired since the commencement of such desertion, shall be made in writing to the Judge Ordinary in chambers, and supported by affidavit. A form of application is given in the Appendix, No. 19.

125. Applications for the discharge of any order made to protect the earnings and property of a wife are to be made to the Judge Ordinary by motion, and supported by affidavit. Notice of such motion, and copies of any affidavit or other document to be read or used in support thereof, must be personally served on the wife eight clear days before the motion is heard.

Bond not required.

126. On a decree of judicial separation being pronounced, it shall not be necessary for either party to enter into a bond conditioned against marrying again.

Change of Proctor, Solicitor, or Attorney.

127. A party may obtain an order to change his or her proctor, solicitor, or attorney, upon application by summons to the Judge Ordinary, or to the registrars in his absence.

128. In case the former proctor, solicitor, or attorney neglects to file his bill of costs for taxation at the time required by the order served upon him, the party may, with the sanction and by order of the Judge Ordinary or of the registrars, proceed in the cause by the new proctor, solicitor, or attorney, without previous payment of such costs.

Order for the immediate Examination of a Witness.

129. Application for an order for the immediate examination of a witness, who is within the jurisdiction of the Court, is to be made to the Judge Ordinary, or to the registrars in his absence, by summons, or if on behalf of a petitioner proceeding in default of appearance of the parties cited in the cause without summons before one of the registrars, who will direct the order to issue, or refer the application to the Judge Ordinary, as he may think fit.

130. Such witness shall be examined *vivâ voce*, unless otherwise directed, before a person to be agreed upon by the parties in the cause, or to be nominated by the Judge Ordinary, or by the registrars, to whom the application for the order is made.

131. The parties entitled to cross-examine the witness to be examined under such an order shall have four clear days' notice of the time and place appointed for the examination, unless the Judge Ordinary, or the registrars to whom the application is made for the order, shall direct a shorter notice to be given.

Commissions and Requisitions for Examination of Witnesses.

132. Application for a commission or requisition to examine witnesses who are out of the jurisdiction of the court is to be made by summons, or if on behalf of a petitioner proceeding in default of appearance without summons, before one of the registrars, who will order such commission or requisition to issue, or refer the application to the Judge Ordinary, as he may think fit.

133. A commission or requisition for examination of witnesses may be addressed to any person to be nominated and agreed upon by the parties in the cause, and approved of by the registrar, or for want of agreement to be nominated by the registrar to whom the application is made.

134. The commission or requisition is to be drawn up and prepared by the party applying for the same, and a copy thereof shall be delivered to the parties entitled to cross-examine the witnesses to be examined

thereunder two clear days before such commission or requisition shall issue, under seal of the court, and they, or either of them, may apply to one of the registrars, by summons, to alter or amend the commission or requisition, or to insert any special provision therein, and the registrar shall make an order on such application, or refer the matter to the Judge Ordinary. A form of a commission and requisition is given in the Appendix, No. 20.

135. Any of the parties to the cause may apply to one of the registrars by summons for leave to join in a commission or requisition, and to examine witnesses thereunder; and the registrar to whom the application is made may direct the necessary alterations to be made in the commission or requisition for that purpose, and settle the same, or refer the application to the Judge Ordinary.

136. After the issuing of a summons to shew cause why a party to the cause should not have leave to join in a commission or requisition, such commission or requisition shall not issue under seal without the direction of one of the registrars.

137. In case a husband or wife shall apply for, and obtain, an order or a commission or requisition for the examination of witnesses, the wife shall be at liberty, without any special order for that purpose, to apply by summons to one of the registrars to ascertain and report to the Court what is a sufficient sum of money to be paid or secured to the wife to cover her expenses in attending at the examination of such witnesses in pursuance of such order, or in virtue of such commission or requisition, and such sum of money shall be paid or secured before such order, or such commission or requisition, shall issue from the registry, unless the Judge Ordinary, or one of the registrars in his absence, shall otherwise direct.

Affidavits.

138. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent is to be inserted therein.

139. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

140. No affidavit will be admitted in any matter depending in the Court for Divorce and Matrimonial Causes in which any material part is written on an erasure, or in the jurat of which there is any interlineation or erasure, or in which there is any interlineation the extent of which at the time when the affidavit was sworn is not clearly shown by the initials of the registrar, commissioner, or other authority before whom it was sworn.

141. Where an affidavit is made by any person who is blind, or who, from his or her signature, or otherwise, appears to be illiterate, the registrar, commissioner, or other authority before whom such affidavit is made, is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also made his or her mark, or wrote his or her signature thereto in the presence of the registrar, commissioner, or other authority, before whom the affidavit was made.

142. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his or her proctor, solicitor, or attorney, or before a partner or clerk of his or her proctor, solicitor, or attorney.

143. Proctors, solicitors, and attorneys, and their clerks respectively, if acting for any other proctor, solicitor, or attorney, shall be subject to the rules and regulations in respect of taking affidavits which are applicable to those in whose stead they are acting.

144. No affidavit can be read or used unless the proper stamps to denote the fees payable on filing the same are delivered with such affidavit.

145. Where a special time is fixed for filing affidavits, no affidavit filed after that time shall be used unless by leave of the Judge Ordinary.

146. The above rules and regulations in respect to affidavits shall, so far as the same are applicable, be observed in respect to affirmations and declarations to be read or used in the Court for Divorce and Matrimonial Causes.

Cases for Motion.

147. Cases for motion are to set forth the style and object of, and the names and descriptions of the parties to, the cause or proceeding before the Court; the proceedings already had in the cause, and the dates of the same; the prayer of the party on whose behalf the motion is made, and, briefly, the circumstances on which it is founded.

148. If the cases tendered are deficient in any of the above particulars, the same shall not be received in the registry without permission of one of the registrars.

149. On depositing the case in the registry, and giving notice of the motion, the affidavits in support of the motion, and all original documents referred to in such affidavits, or to be referred to by counsel on the hearing of the motion, must be also left in the registry; or in case such affidavits or documents have been already filed or deposited in the registry, the same must be searched for, looked up, and deposited with the proper clerk, in order to their being sent with the case to the Judge Ordinary.

150. Copies of any affidavits or documents to be read or used in support of a motion, are to be delivered to the opposite parties to the suit who are entitled to be heard in opposition thereto.

Taxing Bills of Costs.

151. All bills of costs are referred to the registrars of the principal registry of the Court of Probate for taxation, and may be taxed by them, without any special order for that purpose. Such bills are to be filed in the registry.

152. Notice of the time appointed for taxation will be forwarded to the party filing the bill, at the address furnished by such party.

153. The party who has obtained an appointment to tax a bill of costs, shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at or before the same time deliver to him or them a copy of the bill to be taxed.

154. When an appointment has been made by a registrar of the Court of Probate for taxing any bill of costs, and any parties to be heard on the taxation do not attend at the time appointed, the registrar may nevertheless proceed to tax the bill after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

155. The bill of costs of any proctor, solicitor, or attorney will be taxed on his application as against his client, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner.

156. The fees payable on the taxation of any bill of costs shall be paid by the party on whose application the bill is taxed, and shall be allowed as part of such bill; but if more than one-sixth of the amount of any bill of costs taxed as between practitioner and client is disallowed on the taxation thereof, no costs in-

curred in such taxation shall be allowed as part of such bill.

157. If an order for payment of costs is required, the same may be obtained by summons, on the amount of such costs being certified by the registrar.

Wife's Costs.

158. After directions given as to the mode of hearing or trial of a cause, or in an earlier stage of a cause by order of the Judge Ordinary, or of the registrars in his absence, to be obtained on summons, a wife who has entered an appearance may file a bill of costs for taxation as against her husband, and the registrar to whom such bill of costs is referred for taxation shall at the same time, if directions as to the mode of hearing or trial have been given, otherwise when the same are given, ascertain and report to the Court what is a sufficient sum of money to be paid into the registry, or what is a sufficient security to be given by the husband to cover the costs of the wife of and incidental to the hearing or trial of the cause. A form of bond for securing a wife's costs of hearing or trial of a cause is given in the Appendix, No. 21.

159. When on the hearing or trial of a cause the decision of the Judge Ordinary, or the verdict of the jury, is against the wife, no costs of the wife of and incidental to such hearing or trial, shall be allowed as against the husband, except such as shall be applied for, and ordered to be allowed by the Judge Ordinary, at the time of such hearing or trial.

Summonses.

160. A summons may be taken out by any person in any matter or suit depending in the Court for Divorce and Matrimonial Causes, provided there is no rule or practice requiring a different mode of proceeding.

161. The name of the cause or matter, and of the agent taking out the summons, is to be entered in the summons book, and a true copy of the summons is to be served on the party summoned one clear day at least before the summons is returnable, and before seven o'clock p.m. On Saturdays a copy of the summons is to be served before two o'clock p.m.

162. On the day and at the hour named in the summons the party taking out the same is to present himself with the original summons at the judge's chambers, or elsewhere appointed for hearing the same.

163. Both parties will be heard by the Judge Ordinary, who will make such order as he thinks fit, and a minute of such order will be made by one of the registrars in the summons book.

164. If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the Judge Ordinary, who will thereupon make such order as he may think fit.

165. An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the Judge Ordinary on that occasion.

166. If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the party summoned, must be filed in the registry. An order will thereupon be drawn up, and delivered to the person filing such summons or copy.

167. If a summons is brought to the registry, with consent to an order indorsed thereon, signed by the party summoned, or by his proctor, solicitor, or attorney, an order will be drawn up without the necessity of going before the Judge Ordinary; provided that the order sought is, in the opinion of the regis-

trar, one which, under the circumstances, would be made by the Judge Ordinary.

168. The same rules and regulations shall, so far as applicable, be observed in respect to summonses which may be heard and disposed of by the registrars.

Payment of Money out of Court.

169. Persons applying for payment of money out of court are to bring into the registry a notice in writing, setting forth the day on which the money applied for was paid into the registry, the minute entered in the court books on receiving the same, the date and particulars of the order for payment to the applicant. In case the money applied for be in payment of costs, the notice must also set forth the date of filing the bill for taxation, and of the registrar's certificate.

170. The above notice must be deposited in the registry two clear days at least before the money is paid out, and is, in that interval, to be examined by one of the clerks of the registry with the original entries in the court books, and the bills of costs referred to in it, and certified by such clerk to be correct.

171. When the Court is not sitting, payment of money out of court will be made only on such day or days of the week as may be fixed by the registrars, notice whereof will be given in the registry.

Registries and Officers.

172. The registry of the Court for Divorce and Matrimonial Causes, and the clerks employed therein, shall be subject to and under the control of the registrars of the principal registry of the Court of Probate.

173. The record keepers, the sealer, and other officers of the principal registry of the Court of Probate, shall discharge the same or similar duties in the Court for Divorce and Matrimonial Causes, and in the registry thereof, as they discharge in the Court of Probate and the principal registry thereof.

Proceedings under the Legitimacy Declaration Act, 1858.

174. The above rules and regulations, so far as the same may be applicable, shall extend to applications and proceedings under the Legitimacy Declaration Act, 1858.

(To be continued).

Court Papers.

EQUITY CAUSE LISTS, HILARY TERM, 1866.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Davies v. Shepherd (W., June 3) *Full court*
M'Intosh v. Great Western Railway Co. (S., July 24) *L. C.*,
Jefferys v. Dickson (W., July 26) *L. C.*
Williams v. Williams (K., July 27) *L. J.*
Nevinson v. Lennard (R., Aug. 7) *L. J.*
Moore v. Marrable (R., Aug. 8) *L. J.*

Southern v. Harriman (W., Aug. 9) *L. C.*
Yates v. Jack (Ap M) (W., July 10) *L. C.*
Horsfield v. Aughton (W., Nov. 1) *Full court*
Chadwick v. Turner (R., Nov. 2)
Soady v. Turnbull (S., Nov. 2) *L. C.*
Williams v. Glenton (R., Nov. 3)
Robson v. Whittingham (K., Nov. 4)

Wilson v. Hart (W., Nov. 4) *L. C.*
Waite v. Morland (W., Nov. 6) *L. C.*
De Beauvoir v. Benyon (R., Nov. 6)
Townsend v. Toker (R., Nov. 7)
In re Mellor's Estate (R., Nov. 16)
Mellor v. Mellor (16)
Hooper v. Gumm (W., Nov. 10) *L. C.*
M'Lellan v. Gumm (W., Nov. 15) *L. C.*
M'Intosh v. Great Western Railway Co. (S., Nov. 20) *L. C.*
Jenkins v. Parry (S., Nov. 21) *L. C.*
Humphrey v. Roberts (S., Nov. 23) *L. C.*
Martin v. London, Chatham, and Dover Railway Co. (S., Dec. 4) *L. C.*

Humphrey v. Roberts (S., Nov. 23) *L. C.*
Bell v. Wilson (K., Dec. 5)
Wycombe Railway Co. v. Minister and Poor Men of Donnington Hospital (R., Dec. 6)
Spirett v. Willows (S., Dec. 8) *L. C.*
Payne v. Parker (W., Dec. 9) *L. C.*
Bateman v. Boynton (R., Dec. 12)
Dabbs v. Nugent (S., Dec. 18) *L. C.*
Goldsmid v. Tunbridge Wells Improvement Commissioners (R., Dec. 19)

CAUSES.

Baxendale v. West Midland Railway Co. (M D) *L. C.*
Baxendale v. Great Western Railway Co. (M D) *L. C.*
Wood v. Scoles (F C) *L. J.*

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

Sullivan v. Decker (E to ans.)
Brookes v. Davidson (F C)
Corrigan v. Lea (M D)
Raphael v. Thames Valley Railway Co. (M D)
Wood v. Joynton (M D)
Miles v. Miles (M D)
The Consolidated Assurance Co. v. Buckley (M D)
Martin v. Ridley (F C)
Solomon v. Davis (M D)
Lawton v. Ownsworth (F C)
Johnson v. Foulds (M D)
Craggs v. Gray } (F C, Ptn)
Webb v. Gray }
Clark v. Eversfield (M D)
Ormerod v. Rostron (F C)
Howard v. Earl of Shrewsbury (Cause)
Thomas v. Chorley (M D)
Stourton v. Burrell (M D)
Ibbott v. Burrell (M D)
Bloxsome v. Chichester (Cau.)
Bloxsome v. Chichester (Cau.)
Dickenson v. Burrell (M D)
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Windsor v. Campbell (M D)
Jones v. Jones (M D)
Cave v. Ellis (M D)
Garrod v. Garrod (Cause, Witnesses)
Ellice v. North American Colonial Association of Ireland (M D)
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Pewtre v. Rix (M D)
Baker v. Newman (M D)
Markham v. Hutt (M D)
England v. Lord Tredegar (M D)
Ridgway v. Woodhouse (F C)
Loosemore v. Davey (M D)
In re Waite's Estate } (F C, from Waite v. Waite } Ch.)
White v. Webb (M D)
Hawkins v. Stanfield (M D)
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Jones v. Vallance (M D)
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Lock v. London and Lancashire Insurance Co. (M D)
Andrews v. Bohannon (M D)
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In re Sansom's Estate } (F C, from Sansom v. Hammond } Ch.)
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Baxter v. Oliver (M D)
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In re Cashier } (F C, from Cashier v. Cashier } Chamb.)
Urquhart v. Westmacott (F C)
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 Hamp v. Robinson (M D)
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 Bovill v. Goodier (Cause)
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 Mansell v. Hutchfield (M D)
 Cocks v. Romaine (M D)
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 Cousins v. Gilkes (M D)

Margetta v. Perkes (F C, Summons to vary certificate)
 Grimwood v. Webber (F C)
 Chard v. Cox (M D)
 Stoy v. National Assurance & Investment Association (M D)
 Kernochan v. Ryland (M D)
 Arthur v. Clarkson (M D)
 Shattock v. Shattock (M D)
 Ireland v. Soame (M D)
 Dennistoun v. Dennistoun (M D).

Alexandra Park Co. (Limited) v. Wood (M D)
 Homfray v. Pothergill (M D)
 Evans v. Stanier (M D)
 Duddell v. Simpson (M D)
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 Weir v. Weir (M D)
 Jenkins v. Evans (F C, Sums.)
 Evans v. Evans (F C)
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 De Rochefort v. De Chabannes (F C)
 Petheram v. Taylor (F C)
 Pearson v. Rio de Janeiro City Improvement Co. (Cause)
 Bell v. Bell (M D)
 Marjoribanks v. Collins (M D)
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 Laker v. Peasley (Cause)
 Lewington v. London, Chatham, and Dover Railway.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.
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 Earl of Eglinton v. Lamb, Bart. (M D)
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 Lambe v. Orton }
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 Johnson v. Hodgson (Cause, Witnesses)
 Hansom v. Pugin (M D)
 Butt v. Imperial Gas-light & Coke Co. (M D)
 Parsons v. Howkins (M D)
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 Churton v. Frewen (M D)
 Jupp v. Nicholas (Cause)
 Boursot v. Stone (Cause)
 Allison v. Lord (M D)
 Boursot v. Savage (Cause)
 Poynder v. Hulbert (M D)
 Sedgfield v. Sedgfield (Sp C)
 Gimlett v. Gimlett (F C, and Sums. to vary certificate)
 Wakefield v. Duke of Buccleugh (M D)
 Watt v. Watt (F C)
 Hubbard v. Latham (F C)

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 Estate Co (Limited) v. Sharpe (M D)
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 Hart v. Young (Cause)
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Before the Vice-Chancellor Sir W. P. WOOD.

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 Jenner v. Jenner (M D)
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 Clarke v. Cock (M D)
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Before the Vice-Chancellor Sir JOHN STUART.

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 May v. Ramsey (F C)
 Hollings v. Bevan (M D)
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Mackenzie v. Forbes (Cause)
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 man's Bank (Limited) (M D)
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 Yorkshire Reg. v. Hall.
 Northampton ... Osborne.
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Moved Mich. Term, 1866.
 Thomas v. Welch & ora.
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 western Railway Co.
 Miles v. Potter
 Newton v. Friend in Need As-
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 Stote v. Hole & ora.
 Hinde v. Whalley
 Same v. Same
 Rudman & ora. v. Warrington
 & ora.
 Tunney v. Midland Railw. Co.
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 Arbuthnot & ora. v. Streck-
 erson (Case by order)
 Consolidated Bank v. Smith
 (D., to be argued with spe-
 cial case)
 Kidston & ora. v. Empire Ma-
 rine Insurance Co. (To
 stand over till issue in fact
 tried, unless special case
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 Goodwyn, Assignee, &c.,
 App., Shuffelbotham, Resp.
 (County court appeal)
 Beckett v. Midland Railway
 Co. (D.)
 Bolton, Assignee, &c., v. Lan-
 cashire and Yorkshire Rail-
 way Co. (Case at Nisi
 Prius)
 Short v. Simpson & ora. (D.)
 Sage v. Bates
 Seymour v. London & Pro-
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 Co.
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 v. Lamzed (D.)
 Jenkinson v. Fletcher & ora.
 Kay & ora. v. Wheeler & ora.
 (Case by order)
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 Resp. (County Court Ap.)
 Great Western Railway Co.,
 Appa., Redmayne, Respa.
 Same, Appa., Willis, Resp.
 Skillett v. Fletcher
 M'Andrew v. Chapple
 Garrett v. Davies
 Union Marine Insurance Co.
 v. Martin
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 Walton, Resp.
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Friday, Jan. 19.
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 Watling v. Askley
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 London and North-western
 Railway Co., Appa., Dick-
 inson, Resp.
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 Same v. Same
Wednesday, Jan. 24.
 Paynter & ora. v. James
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 Purday
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 Cumberland Metcalfe.
 Lincolnshire Clark (To stand over till Easter
 Term).
 Kent Inhabitants of Lee.
 Middlesex Pemberton v. Trustees of St. Mary's,
 Whitechapel.
 Devonport Ash v. Lynn.
 Lancashire Emmott v. Clayton.
 Nottingham Shelbourne v. Oliver.
 Gloucestershire.. Morris v. Jeffries.
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 Hilton and Wakefield v. Overseers of the
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 Essex Flowers v. Raine.
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Basden v. Waite

In re Standard Bank of Brit-
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Hull.

CUR. ADV. VULT.

Hirschfield v. Smith

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— Mason v. Same
— Adams v. Same

Totness—Prout v. Same
— Berry v. Same
— Hodge v. Same
Catterall v. Hindle
Sheldon v. Mayor, &c. of Sta-
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Thursday 18	Circuits chosen.
Friday 19
Saturday 20	Criminal Appeals.
Monday 22	Special Paper.
Tuesday 23
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Saturday 27
Monday 29
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Wednesday 31

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Monday 22	Middlesex, second Sitting.
Monday 29	Middlesex, third Sitting.

NEW TRIALS.

FOR JUDGMENT.

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Trinity Term, 1865.*
Midd.—Bouillon v. Valentin
Moved Mich. Term, 1865.
Lond.—Noble v. Trueman
Manchester—Noble v. Ward
Liverp.—Haughton v. Em-
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(Limited)

FOR ARGUMENT.

Moved Hil. Term, 1864.
Liverp.—Brabner v. Macam

Moved Mich. Term, 1865.

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— Constantine v. Dugdale
— Harrison v. Brierley
Worcest.—Woodall v. King-
ley & ors.
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Chelmsford—Cook v. Jaggard
Derby—Carrington v. Briggs
Cardigan—Richards v. Jones
*Moved after the 4th day of
Mich. Term, 1865.*
Midd.—Dixon v. Dixon.

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FOR JUDGMENT.

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Richards v. Harper & an. (D.)

FOR ARGUMENT.

Clark v. Magnus (D., to stand
over till issues in fact tried)
Cooke v. Mostyn (D., part hd.
Nov. 14, 1864, to stand over
till issues in fact tried)

Campbell v. Dufaur (D., part
heard June 18, 1865, to
stand over till issues in fact
tried)

Goodyear v. Lindsay (D., Nov.
25, 1865, ordered to be re-
argued)
Lord Colchester v. Kewney
(Sp. C., part heard June 12,
1865)

Bell v. Nash (D., part heard
Nov. 20, 1865, to stand
over till after amendment
of declaration)
Lucas v. Newman (D.)
Greedy v. Gibbon (D., pt. hd.
Nov. 20, 1865)
Baxendale & ors. v. London
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Co. (Limited) v. Montefiore
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Same v. Willoughby (Sp. C.)
Same v. Ward (Sp. C.)
Same v. Levy (Sp. C.)
Same v. Goldsmid (Sp. C.)
Montefiore v. Ramsgate and
Victoria Hotel Co. (Li-
mited) (Sp. C.)
Willoughby v. Same (Sp. C.)
Ward v. Same (Sp. C.)
Levy v. Same (Sp. C.)

PEREMPTORY PAPER.

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and to be proceeded with the next Day, if necessary, be-
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Railway Co. v. Wood (E.) | Fletcher v. Rylands (E.)

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THE JURIST.

LONDON, JANUARY 20, 1866.

THE decisions on the effect of the act to consolidate and amend the laws relating to industrial and provident societies (25 & 26 Vict. c. 87), so far as relates to the proper parties to sue and be sued for claims by and against such societies, have already led to doubt, perplexity, and useless litigation, and to results which, it is admitted, were never contemplated by the Legislature. It may, therefore, be of some use to those engaged or interested in such societies to explain what these decisions are, and to point out that the difficulties that exist apply to cases arising out of contracts with such societies, established under the repealed acts, made with them before they are registered under the 25 & 26 Vict. c. 87.

By the stat. 17 & 18 Vict. c. 25, "An Act to amend the Industrial and Provident Societies Act, 1852," after reciting that it was expedient to vary the provisions of the laws relating to industrial and provident societies, registered under the said act of 1852, so far as concerned the manner in which legal proceedings should be carried on in any matter concerning such society, it was provided that such society should sue and be sued in the name of the registered officer for the time being, and if there were no such officer for the time being, then in the name of the trustees of the said society. These acts were repealed in 1862 by the 25 & 26 Vict. c. 87, "An Act to amend and consolidate the Laws relating to Industrial and Provident Societies," and by sect. 5 of that act, it is enacted that copies of the rules of the society shall be forwarded to the registrar of friendly societies, and shall be dealt with in the manner provided by the Friendly Societies Act, 1855, and he shall thereupon give his certificate of registration, and that such certificate shall in all cases be conclusive evidence that the society has been duly registered; and that thereupon the members of such society shall become a body corporate by the name therein described, having a perpetual succession, and a common seal, with the power to hold lands and buildings with limited liability. And by sect. 6, that the certificate of registration shall vest in the secretary all the property that may at the time be vested in any person in trust for the secretary, and all legal proceedings then pending by or against any such trustee or other officer on account of the society, may be prosecuted by or against the society in its registered name, without abatement.

In *Dean v. Mellard and Others* (15 C. B., N. S., 19) the action was brought to recover the price of goods supplied by the plaintiff to the "Kidgrove Industrial and Provident Co-operative Society," of which the defendants were shareholders and committeemen. The society was registered on the 26th December, 1862, under the 25 & 26 Vict. c. 87. There were two trustees.

The affairs of the society were under the management of a committee, and the goods in question had been supplied in pursuance of a resolution of the committee, to which all the defendants were parties, and the goods were supplied from 1861 to July, 1862; the claim, therefore, arose on contracts made prior to the registration of the society under the act of 1862. On the trial of the cause, it was objected, that the defendants were not personally liable, and that the society ought to have been sued under the corporate name; and the plaintiff was nonsuited, leave being reserved to the plaintiff to enter a verdict for the plaintiff.

The Court of Common Pleas, after argument on cause shewn against the rule to enter a verdict for the plaintiff, came to the conclusion that the defendants were personally liable, and that the society could not have been sued in its corporate name, though Mr. Justice Williams commenced his judgment by saying, that he felt considerable difficulty in dealing with the statute, because he was confident that the consequences which had resulted were never contemplated by the Legislature. He then referred very fully to the statute, and the state of the law that preceded it. As to the point, that the statute had, in effect, given the society the right to sue in the corporate name, he was of opinion that it had not, because it only said, in terms, that legal proceedings then pending, i. e. at the time of the registration, should be prosecuted by or against the society in its registered name. "It has been suggested," said the learned judge, "that the stat. 25 & 26 Vict. c. 83, did not intend to cast upon individual members a liability which did not exist before, viz. of being sued in the first instance. That argument would have been admissible if the Legislature, instead of enacting, as they have done in sect. 6, that 'the certificate of the registration shall vest in the society all the property that may at any time be vested in any person in trust for the society, and all legal proceedings then pending by or against any such trustee or other officer on account of the society may be prosecuted by or against the society in its registered name without abatement,' had gone on to say, that 'all claims and rights of action existing at the time of the passing of the act' might be so prosecuted. But they have not said so; they have confined the indulgence to actions pending at the time of the obtaining the certificate of registration.

Mr. Justice Willes and Mr. Justice Keating came to the same conclusion, the former expressing his great regret at being compelled to come to that conclusion, because it exposed individuals to a liability to an action, which they might fairly have supposed could only have been brought against the general body of the society—a regret shared by Mr. Justice Keating.

The authority of the case of *Dean v. Mellard* has been adopted, or rather, we may say, yielded to, by the Court of Exchequer, in the recent case of *Lenton and Another v. The Blakeney Joint Co-operative Society* (3 H. & C. 852), where the plaintiffs were nonsuited, having sued the society in its corporate name for a claim for goods supplied by the plaintiffs to the society in November, 1864, the society having been registered under the 25 & 26 Vict. c. 87, in February, 1865; the

claim, therefore, arising out of a contract made before registration under the new act. At the trial a verdict was entered for the plaintiffs, leave being reserved to the defendants to move to enter a nonsuit. The Court in Banc, after hearing the defendants' counsel, made the rule absolute for a nonsuit. "We are all of opinion," said Mr. Baron Martin, "that the rule must be made absolute. The case is concluded by *Dean v. Mellard*, in the Court of Common Pleas; and if that decision is to be overruled, it must be by a court of error." And his judgment proceeded with a full citation from the judgment of Mr. Justice Williams in *Dean v. Mellard*, and concluded, after stating that Willes and Keating, JJ., were of the same opinion, as follows:—"It may be that the construction put upon the 6th section by the defendants' counsel is a fair and reasonable one, but the case of *Dean v. Mellard* prevents us from adopting it."

Bramwell and Channell, BB., concurred, the former saying that he admitted the force of the argument, that the Legislature could never have intended to make a distinction between actions pending and actions not commenced; and that if a plaintiff issued his writ one day before the society was registered under the 25 & 26 Vict. c. 87, he might sue them in their corporate name; but if he commenced his action the day after registration, he could not so sue them.

Then comes the case of *The Queensbury (late Queenshead) Industrial Society (Limited) v. Ricketts and Others* (3 H. & C. 857; S.C., 11 Jur., N. S., part 1, p. 877). There the question arose on a contract entered into, like those in the other cases, after the establishment of the society under former acts, but before registration under the new act. The action was on a bond given by the defendants to the trustees of the society; and the question was, like that in the other cases, a question of parties to the action; not, however, as to who could be sued, but who could sue; and the Court acquiescing in *Dean v. Mellard*, that the society could not be sued in its corporate name, held nevertheless, that it could sue in such name; thus distinguishing between the case of society plaintiffs and society defendants. The ground on which the judgment proceeded was, that under sect. 6, the section set out at the commencement of these observations, the property in the bond vested in the society, and that this carried with it incidentally the right to sue on the bond in the corporate name; and by way of distinguishing the case from *Dean v. Mellard*, it was observed, that there was no general vesting in the corporate body the debts due from the society, but there was a general vesting in the corporate body the property which was formerly vested in the trustees. Now, it is to be observed, that it was not enough to enable the plaintiffs to sue to decide that the property vested. The property in the bond was vested in the society before the act of 1862 as well as after it. The society were always the cestuis que trust and beneficial owners of the bond given to the trustees. The Court of Exchequer, therefore, in deciding that the action would lie in the corporate name, did not merely decide that the property vested in the

corporation, but that the act, though it did not say so in express terms, had, by implication, enacted that any action on it by the society should be in the corporate name. That it was to be collected by implication, not only that the property vested, but that the statute meant to give also the right of action in the corporate name; but, if this be so, why not also decide, that by implication, the statute also enacted that the society should be sued in its corporate name for its liabilities as well as sue for its debts? During the argument in this last case Bramwell, B., said, "Does not the section (i. e. the 6th), mean that all property shall vest in the society, so that any legal proceeding pending at the time the society was registered, should not abate, but may be prosecuted in their corporate name?" But if the meaning of the act is to govern the law, the meaning by implication, that meaning is certainly as plainly indicated in favour of the action, for the liabilities of the society being brought against them in their corporate name, as it is in favour of the action for the debts due to them being brought by them in the corporate name; otherwise, we have the statutes enacting so inconsistent and repugnant a law, that, in respect of the same contract, the society may sue but cannot be sued.

Such, however, is the result of the different decisions on this enactment; and it is with great respect that we submit, that if one of the Courts of Westminster Hall feels bound to yield to the interpretation put upon a statute by the high authority of a Court of co-ordinate jurisdiction, instead of attending to the still higher authority of the statute itself, the proper course is to adopt not only the decision itself, but all its legitimate consequences, without attempting to obviate them by distinctions so refined, that the effect is indirectly to impugn the decision they still uphold. The better course, in cases where the previous decision is not satisfactory to the minds of other judges, who have also to consider the statute, would seem to be, that they should either decline to act upon it, as having an equal right to put their own interpretation on the statute, or adopt it with all its consequences, and leave it to be reviewed on appeal or in error. It cannot be said to be a satisfactory thing for the public, that the interpretation of statutes should turn on refinements such as have prevailed in the decisions to which we have here referred. Whether the Legislature, regard being had to the increasing number and importance of these societies, and the doubts thus created as to the mode in which they are to sue and be sued, will, by a short act, remove these purely technical difficulties, is matter for the Legislature to determine. It should be observed, however, that with regard to the rights and liabilities of these societies, arising out of contracts made with them after their registration under the act of 1862, there is no difficulty, because in such cases the contract would be with the corporate body in the corporate name, and the ordinary rule would be followed, that the parties entering into the contract are the parties to sue and be sued upon it.

RULES AND REGULATIONS FOR HER MAJESTY'S COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

(Concluded from p. 17).

APPENDIX.

FORMS

Which are to be followed as nearly as the circumstances of each case will allow.

No. 1.—Petition.

To the Judge Ordinary of her Majesty's Court for Divorce and Matrimonial Causes.

The — day of —, 18—.

The petition of A. B., of —, sheweth—

1. That your petitioner was on the — day of —, 18—, lawfully married to C. B., then C. D. [spinster or widow], at the parish church of &c.

[Here state where the marriage took place.]

2. That after his said marriage your petitioner lived and cohabited with his said wife at —, and at —, and that your petitioner and his said wife have had issue of their said marriage three children; to wit,

[Here state the names and ages of the children, issue of the marriage.]

3. That on the — day of —, 18—, and on other days between that day and —, the said C. B., at —, in the county of —, committed adultery with R. S.

4. That in and during the months of January, February, and March, 18—, the said C. B. frequently visited the said R. S. at —, and on divers of such occasions committed adultery with the said R. S.

Your petitioner, therefore, humbly prays—

That your Lordship will be pleased to decree—

[Here set out the relief sought.]

And that your petitioner may have such further and other relief in the premises as to your Lordship may seem meet.

[Petitioner's signature.]

No. 2.—Citation.

In her Majesty's Court for Divorce and Matrimonial Causes. Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To C. B., of —, in the county of —.

Whereas A. B., of &c., claiming to have been lawfully married to —, has filed — petition against — in our said court, praying for —, whersin — alleges that you have been guilty of adultery [or have been guilty of cruelty towards — the said —, or as the case may be]: Now, this is to command you, that within eight days after service hereof on you, inclusive of the day of such service, you do appear in our said court, then and there to make answer to the said petition, a copy whereof, sealed with the seal of our said court, is herewith served upon you. And take notice, that in default of your so doing, our said Court will proceed to hear the said charge [or charges] proved in due course of law, and to pronounce sentence therein, your absence notwithstanding. And take further notice, that for the purpose aforesaid you are to attend in person, or by your proctor, solicitor, or attorney, at the registry of our said court in Doctors Commons, London, and there to enter an appearance in a book provided for that purpose, without which you will not be allowed to address the Court, either in person or by counsel, at any stage of the proceedings in the cause.

Dated at London, the — day of —, 18—, and in the — year of our reign.

(L.s.) (Signed) X. Y., Registrar.

No. 3.—Præcipe for Citation.

In her Majesty's Court for Divorce and Matrimonial Causes.

Citation for A. B., of —, against C. B., of —, to appear in a suit for —, by reason of

(Signed) A. B., in person,

or

C. D., proctor, solicitor, or attorney for the said A. B.

[Here insert the address required within three miles of the General Post-office.]

No. 4.—Certificate of Service.

This citation was duly served by the undersigned G. H. on the within-named C. B., of —, at —, on the — day of —, 18—.

(Signed) G. H.

No. 5.—Affidavit of Service of Citation.

In her Majesty's Court for Divorce and Matrimonial Causes.

A. B. v. C. B. and E. F.

I, C. D., of &c., make oath and say—

That the citation, bearing date the — day of —, 18—, issued under seal of this court, against C. B., the respondent [or co-respondent] in this cause, and now hereunto annexed, marked with the letter A., was duly served on me by the said C. B., at —, in the county of &c., by shewing to h— the original under seal, and by leaving with h— a true copy thereof, on the — day of —, 18—. And I further make oath and say, that I did at the same time and place deliver to the said C. B. personally a certified copy, under seal of this court, of the petition filed in this cause.

Sworn at &c., on the — day }
of —, 18—. Before me }

No. 6.—Entry of an Appearance.

In her Majesty's Court for Divorce and Matrimonial Causes.

A. B., petitioner, { The respondent, C. B., appears in person [or C. D., the proctor, solicitor, or attorney for C. B., the respondent (or E. F., the co-respondent), appears for the said respondent or co-respondent.]
C. B., respondent, and
E. F., co-respondent.

[Here insert the address required within three miles of the General Post-office.]

Entered this — day of —, 18—.

No. 7.—Answer.

In her Majesty's Court for Divorce and Matrimonial Causes.

The — day of —, 18—.

A. B. v. C. D.

The respondent, C. B., by C. D., her proctor, solicitor, or attorney [or in person], in answer to the petition filed in this cause, saith—

1. That she denies that she committed adultery with R. S., as set forth in the said petition:
2. Respondent further saith, that on the — day of —, 18—, and on other days between that day and —, the said A. B., at —, in the county of —, committed adultery with K. L.

[In like manner respondent is to state connivance, condonation, or other matters relied on as a ground for dismissing the petition.]

Wherefore this respondent humbly prays—

That your Lordship will be pleased to reject the prayer of the said petition and decree, &c.

No. 8.—*Questions of Fact for the Jury.*

In her Majesty's Court for Divorce and Matrimonial Causes.

A. B. v. C. B. and E. F.

Questions for the Jury.

1. Whether C. B., the respondent committed adultery with E. F., the co-respondent.
2. Whether A. B., the petitioner, has condoned the adultery committed by C. B., the respondent (if any).
3. Whether A. B., the petitioner, has been guilty of cruelty towards C. B., the respondent.

[*Here set forth in the same form all the questions at issue between the parties.*]

4. What amount of damages should be paid by E. F., the co-respondent, in respect of the adultery (if any) by him committed.

No. 9.—*Act on Petition.*

In her Majesty's Court for Divorce and Matrimonial Causes.

A. B. v. C. B. and E. F.

On the — day of —, 18—.

A. B., the petitioner [or C. D., the proctor, solicitor, or attorney of A. B., the petitioner] alleged that

[*Here state briefly the facts and circumstances upon which the petition is founded.*]

Wherefore the said A. B. or C. D., referring to the affidavits and proofs to be by him exhibited in verification of what he so alleged, prayed that

[*Here set forth the prayer of the petitioner.*]

(Signed) A. B.
or
C. D.

Answer.

In her Majesty's Court for Divorce and Matrimonial Causes.

A. B. v. C. B. and E. F.

On the — day of —, 18—.

C. B., the respondent [or G. H., the proctor, solicitor, or attorney of C. B., the respondent], in answer to the allegations in the act on petition, bearing date the — day of —, 18—, of A. B., admitted [or denied] that

[*Here set forth any allegations admitted or denied.*]

And he alleged that

[*Here state any facts or circumstances in explanation or in answer.*]

Wherefore the said C. B. or G. H., referring to the affidavits and proofs to be by her exhibited in verification of what she so alleged, prayed

[*Here state the prayer of respondent.*]

(Signed) C. B.
or
G. H.

Conclusion.

A. B. v. C. B. and E. F.

On the — day of —, 18—.

A. B., the petitioner [or C. D., the proctor, solicitor, or attorney for A. B., the petitioner] in reply to the allegations of C. B. [or G. H.], in her answer, bearing date —, denied the same in great part to be true or relevant. Wherefore he alleged and prayed as before.

(Signed) A. B.
or
C. B.

No. 10.—*Petition for Reversal of Decree.*

To the Judge Ordinary of her Majesty's Court for Divorce and Matrimonial Causes.

The — day of —, 18—.

The petition of A. B., of —, sheweth—

1. That your petitioner was on the — day of —, 18—, lawfully married to C. B., the C. D., spinster [or widow], at the parish of &c.

[*Here state where the marriage took place.*]

2. That on the — day of —, your Lordship, by your final decree, pronounced in a cause then depending in this court, intitled C. B. v. A. B., decreed as follows; to wit:

[*Here set out the decrees.*]

3. That the aforesaid decree was obtained in the absence of your petitioner, who was then residing at —.

[*State facts tending to show that the petitioner did not know of the proceedings; and further, that had he known of them he might have offered a sufficient defence.*]

or,

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[*Here state any legal grounds justifying the petitioner's separation from his wife.*]

Your petitioner therefore humbly prays—

That your Lordship will be pleased to reverse the said decree.

No. 11.—*Appeal.*

I, A. B., the petitioner [or C. D., the proctor, solicitor, or attorney of A. B., the petitioner], in a suit lately depending in her Majesty's Court for Divorce and Matrimonial Causes, intitled A. B. v. C. D. and E. F., do hereby, in due time and place, complain of and appeal against a certain order or decree made in the said cause by the Right Honourable the Judge Ordinary of the said court on the — day of —, 18—. Whereby, amongst other things, the said Judge Ordinary did order and decree

[*Here set forth the whole of the decree, or such part of it as may be appealed against.*]

(Signed) A. B.
or
C. D.

This instrument of appeal was lodged in the registry of her Majesty's Court for Divorce and Matrimonial Cause, this — day of —, 18—.

To be signed by a clerk in the registry.

No. 12.—*Affidavit in support of Motion for Decree Absolute.*

In Her Majesty's Court for Divorce and Matrimonial Causes.

A. B. v. C. B. and E. F.

I, C. D., of &c., solicitor for A. B., the petitioner in this cause, make oath and say, that on the — day of —, 18—, I carefully searched the books kept in the registry of this court for the purpose of entering appearances, from and including the — day of —, 18—, the day of the date of the decree nisi made in this cause, to the — day of —, 18—, and that during such period no appearance has been entered in the said books by her Majesty's Procurator-General, or by or on behalf of any other person or persons whomsoever. And I further make oath and say, that I have also carefully searched the books kept in the said registry for entering the minutes of proceedings had in this cause from and including the said — day of —, 18—, to the — day of —, 18—, and that no leave has been obtained by her Majesty's Procurator-General, or by any other person or persons whomsoever to intervene in this cause, and that no affidavit or affidavits, instruments, or other documents whatsoever, have been filed in this cause by her Majesty's Procurator-General, or any other

persons whomsoever during such period, or at any other period during the dependence of this cause, in opposition to the said decree nisi being made absolute.

Sworn at &c., on the — day }
of —, 186—. Before me, }

No. 13.—*Petition for Alimony.*

To the Judge Ordinary of her Majesty's Court for Divorce and Matrimonial Causes.

A. B. v. C. B. and E. F.

The — day of — 18—.

The petition of C. B., the lawful wife of A. B., sheweth,—

1. That the said A. B. does now carry on, and has for many years past carried on, the business of a — at —, and from such business he derives the net annual income of £—;
2. That the said A. B. is now or lately was possessed of or entitled to — proprietary shares of the — Railway Company, amounting in value to £—, and yielding a clear annual dividend of £—;
3. That the said A. B. is possessed of certain stock-in-trade in his said business of a —, of the value of £—.

[*In same manner state particulars of any other property which the husband may possess.*]

Your petitioner, therefore, humbly prays,—

That your Lordship will be pleased to decree her such sum or sums of money, by way of alimony pendente lite [or permanent alimony], as to your Lordship shall seem meet.

No. 14.—*Election of a Guardian.*

By a Petitioner.

Whereas a suit is about to be instituted in her Majesty's Court for Divorce and Matrimonial Causes on behalf of A. B. v. C. B., the wife of the said A. B., and E. F. And whereas the said A. B. is now a minor of the age of — years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in his own name.

Now, I, the said A. B., do hereby make choice and elect G. H., my natural and lawful father and next of kin, to be my curator or guardian for the purpose of instituting the said suit, and for the purpose of carrying on and prosecuting the same until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years, and I hereby appoint C. D., of &c., my proctor [solicitor or attorney] to file, or cause to be filed, this, my election, for me in the registry of the said court.

In witness whereof, I have hereunto set my hand and seal this — day of —, 18—.

(Signed) A. B. (L. S.)

Signed, sealed, and delivered by the within-named A. B., in the presence of —

One attesting witness.

By a Respondent.

Whereas a citation bearing date the — day of —, 18—, has issued under seal of her Majesty's Court for Divorce and Matrimonial Causes, at the instance of A. B., claiming to have been lawfully married to C. B., citing the said C. B. to appear in the said court, and then and there to make answer to a certain petition of the said A. B. filed in the said court. And whereas the said C. B. is now a minor of the age of — years and upwards, but under the age of twenty-one years, and therefore by law incapable of acting in her own name.

Now, I, the said C. B., do hereby make choice of and elect G. H., my natural and lawful father and next of kin, to be my curator or guardian for the purpose of entering an appearance for me and on my behalf in the said court, and for

the purpose of making answer for me to the said petition, and of defending me in the said cause, and to abide for me in judgment until a final decree shall be given and pronounced therein, or until I shall attain the age of twenty-one years, and I hereby appoint, &c.

No. 15.—*Subpoena ad Testificandum.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [names of all witnesses included in the subpoena to be inserted], greeting. We command you, and every of you, to be and appear in your proper persons before [insert the name of the judge], Judge Ordinary of our Court for Divorce and Matrimonial Causes, at Westminster, in our county of Middlesex, on — the — day of —, 18—, by eleven of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, to testify the truth, according to your knowledge, in a certain cause now in our said court before our said Judge Ordinary, depending between A. B., petitioner, and C. B., respondent, and E. F., co-respondent, on the part of the petitioner or respondent, or co-respondent [or, as the case may be], and on the aforesaid day between the parties aforesaid to be heard. And this you or any of you shall by no means omit, under the penalty of each of you of 100l. Witness [insert the name of the judge], at the Court for Divorce and Matrimonial Causes, the — day of —, 18—, in the — year of our reign.

(Signed) X. Y., Registrar.

No. 16.—*Præcipe for Subpoena ad Testificandum.*

In her Majesty's Court for Divorce and Matrimonial Causes.

Subpoena for [insert witnesses' names], to testify between A. B., petitioner, C. B., respondent, and E. F., co-respondent, on the part of the petitioner [or respondent, or co-respondent].

(Signed) { A. B. } or, { P. A., petitioner's [or respondent's]
C. B. } or, { or co-respondent's } proctor, solicitor, or attorney.
E. F. }

No. 17.—*Subpoena Duces Tecum.*

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [names of all parties included in the subpoena to be inserted], greeting. We command you, and every of you, to be and appear in your proper persons before [insert the name of the judge], Judge Ordinary of our Court for Divorce and Matrimonial Causes at Westminster, in our county of Middlesex, on — the — day of —, 18—, by eleven o'clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, and also that you bring with you, and produce, at the time and place aforesaid [here describe shortly the deeds, letters, papers, &c. required to be produced], then and there to testify and shew all and singular those things which you, or either of you, know, or the said deed or instrument doth import, of and concerning a certain cause or proceeding now in our said court before our said Judge Ordinary, depending between A. B., petitioner, and C. B., respondent, and E. F., co-respondent, on the part of the petitioner [or the respondent or co-respondent, as the case may be], and on the aforesaid day between the parties aforesaid to be heard. And this you, or any of you, shall by no means omit, under the penalty of each of you of 100l. Witness [insert the name of the judge], at our Court for Divorce and Matrimonial Causes, the — day of —, 18—, in the — year of our reign.

(Signed) X. Y., Registrar.

No. 18.—*Præcipe for Subpoena Duces Tecum.*

In her Majesty's Court for Divorce and Matrimonial Causes.

Subpoena for — to testify and produce &c., between A. B., petitioner, C. B., respondent, and E. F., co-respondent,

on the part of the petitioner [or respondent or co-respondent.]

(Signed) { A. B. }
 { C. B. } or, { P. A., petitioner's [or respondent's]
 { E. F. } { or co-respondent's } proctor, solicitor, or attorney.

No. 19.—Application for a Protection Order.

To the Judge Ordinary of the Court for Divorce and Matrimonial Causes.

The application of C. B., of —, the lawful wife of A. B., sheweth—

That on the — day of — she was lawfully married to A. B., at —:

That she lived and cohabited with the said A. B. for — years at —, and also at —, and hath had — children, issue of her said marriage, of whom — are now living with the applicant, and wholly dependant upon her earnings:

That on or about — the said A. B., without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her:

That since the desertion of her said husband the applicant hath maintained herself by her own industry, and hath thereby and otherwise acquired certain property [or, hath become possessed of certain property], consisting of [here state generally the nature of the property.]

Whereas the said C. B. prays an order for the protection of her earnings and property acquired since the said — day of —, from the said A. B., and from all creditors and persons claiming under him.

(Signed) C. B.

No. 20.—Commission or Requisition for Examination of Witnesses.

In her Majesty's Court for Divorce and Matrimonial Causes.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [here set forth the name and proper description of the commissioner], greeting. Whereas a certain cause is now depending in our Court for Divorce and Matrimonial Causes between A. B., petitioner, and C. B., respondent, and E. F., co-respondent, wherein the said A. B. has filed his petition praying for a dissolution of his marriage with the said C. B., [or otherwise as in the prayer of the petition]. And whereas, by an order made in the said cause on the — day of —, 18—, on the application of the said A. B. it was ordered that a commission [or requisition] should issue under seal of our said court for the examination of [here insert name and address of one of the persons to be examined] and others as witnesses to be produced on the part of the said A. B., the petitioner, in support of his said petition (saving all just exceptions). Now know ye that we do, by virtue of this commission [or requisition] to you directed, authorise [or request] you, within thirty days after the receipt of this commission [or requisition], at a certain time and place to be by you appointed for that purpose, with power of adjournment to such other time and place as to you shall seem convenient, to cause the said witnesses to come before you, and to administer to the said witnesses respectively an oath truly to answer such questions as shall be put to them by you touching the matters set forth in the said petition (a true and authentic copy whereof, sealed with the seal of our said court, is hereunto annexed), and such oath being administered, we do hereby authorise [or request] and empower you to take the examination of the said witnesses touching the matters set forth in the said petition, and to reduce the said examination, or cause the same to be reduced, into writing. And that for the purpose aforesaid you do assume to yourself some notary public, or other lawful scribe, as and for your actuary in that behalf, if to you it should seem meet and convenient so to do. And the said examination being so taken and reduced to writing as aforesaid, and subscribed by you, we do

require [or request] you forthwith to transmit the said examination, closely sealed up, to the registry of our said court in Doctors Commons, in the city of London, together with these presents. And we do hereby give you full power and authority to do all such acts, manners, and things as may be necessary, lawful, and expedient for the due execution of this our commission [or requisition.]

Dated at London, the — day of —, in the year of our Lord 18—, and in the — year of our reign.

(Signed) X. Y., Registrar.

No. 21.—Bond for securing Wife's Costs.

Know all men by these presents that we, A. B., of &c., G. H., of &c., and K. L., of &c., are held and firmly bound unto X. Y., one of the registrars of the principal registry of her Majesty's Court of Probate, in the penal sum of £— of good and lawful money of Great Britain, to be paid to the said X. Y., and for which payment to be well and truly made we bind ourselves and each of us for the whole, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals.

Dated the — day of —, in the year of our Lord 18—.

Whereas a certain cause is now depending in her Majesty's Court for Divorce and Matrimonial Causes between A. B., petitioner, of the one part, and C. B., respondent, and E. F., co-respondent, of the other part: and whereas X. Y., one of the registrars of her Majesty's Court of Probate, has, by a report under his hand, made in the said cause on the — day of —, 18—, reported to the Court that £— was a sufficient sum to be paid into the registry of the Court of Probate to cover the costs of the said respondent [or petitioner] of and incidental to the hearing of the said cause [or otherwise, as in the registrar's report], or that a bond under the hand and seal of the said A. B., and of two sufficient sureties in the penal sum of £—, conditioned for the payment of such costs of the said C. B. as shall be certified to be due and payable by the said A. B., not exceeding the said sum of £— [or otherwise, as in report], with — hours' notice of such sureties to the proctor [solicitor or attorney] of the said C. B., was a sufficient security to be given for the costs aforesaid: now, the condition of this obligation is such, that if the above-bounden A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to the above-named X. Y., his heirs, executors, administrators, or assigns, the full sum of £— of good and lawful money of Great Britain, or the lawful costs of the said C. B., the respondent [or petitioner], of and incidental to the hearing and trial of this cause [or otherwise, as in report], to the extent of £—, then this obligation is to be void and of none effect, otherwise to remain in full force and virtue.

Sealed and delivered by the said A. B., } A. B. (L.S.)
G. H., and K. L., in the presence } G. H. (L.S.)
of } K. L. (L.S.)

One attesting witness.

AMENDED AND ADDITIONAL RULES AND ORDERS FOR HER MAJESTY'S COURT OF PROBATE.

IN CONTENTIOUS BUSINESS.

By virtue and in pursuance of the provisions of the stat. 20 & 21 Vict. c. 77, I, the Right Hon. Sir James Plaisted Wilde, Knt., Judge of her Majesty's Court of Probate, with the concurrence of the Right Hon. Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, and of the Right Hon. Sir Alexander James Edmund Cockburn, Bart., Lord Chief Justice of the Court of Queen's Bench, make and issue the following amended and additional rules and orders in respect to the contentious business in the said Court

of Probate, to take effect on and after the 11th January, 1866.

Dated the 29th day of December, 1865.

AMENDED RULES AND ORDERS.

In place of rule 40 of the rules and orders in contentious business, and of the form No. 8, referred to in rule 38 of the said rules and orders, it is ordered, that—

40. If one party propounds a will or testamentary script in his declaration, and the adverse parties, or either of them, desire to propound another will or testamentary script, the adverse parties must, with their pleas, deliver to the opposite party, and file in the registry, a declaration propounding such other will or testamentary script, to which the opposite party shall plead; and the form of declaration, and the pleadings and proceedings arising therefrom, shall be the same as are directed by the rules and orders of this Court in respect to the original declaration delivered and filed in the cause.

40a. The party or parties pleading to a declaration propounding a will or testamentary script shall be allowed to plead only the pleas hereunder set forth, unless by leave of the judge, to be obtained on summons.

- (1). That the paper writing, bearing date &c., and alleged by the plaintiff [or defendant] to be the last will and testament [or codicil to the last will and testament] of A. B., late of &c., deceased, was not duly executed according to the provisions of the stat. 1 Vict. c. 26, in manner and form as alleged.
- (2). That A. B., the deceased in this cause, at the time his alleged will [or codicil] bears date, to wit, on the &c., was not of sound mind, memory, and understanding.
- (3). That the execution of the said alleged will [or codicil] was obtained by the undue influence of C. D., and others acting with him.
- (4). That the execution of the said alleged will [or codicil] was obtained by the fraud of C. D., and others acting with him.
- (5). That the deceased, at the time of the execution of the said alleged will [or codicil], did not know and approve of the contents thereof.

Any party pleading the last of the above pleas shall therewith (unless otherwise ordered by the judge), deliver to the adverse parties, and file in the registry particulars in writing, stating shortly the substance of the case he intends to set up thereunder; and no defence shall be available thereunder which might have been raised under any other of the said pleas, unless such other plea be pleaded therewith.

ADDITIONAL RULES AND ORDERS.

Writs of Attachment and other Writs.

107. Applications for writs of attachment, and also for writs of fieri facias and of sequestration, must be made to the judge by motion in court.

108. Such writs, when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the registry, with an office copy of the order, and, when approved and signed by one of the registrars, shall be sealed with the seal of the court, and it shall not be necessary for the judge to sign such writs.

109. Any person in custody under a writ of attachment, may apply for his or her discharge to the judge,

if the Court be then sitting; if not, then to one of the registrars, who for good cause shewn shall have power to order such discharge.

(Signed) JAMES PLAISTED WILDE.

Approved,
CRANWORTH, C.
A. E. COCKBURN.

AMENDED RULE AND ORDER FOR HER
MAJESTY'S COURT OF PROBATE.

IN NON-CONTENTIOUS BUSINESS.

By virtue and in pursuance of the provisions of the stat. 20 & 21 Vict. c. 77, I, the Right Hon. Sir James Plaisted Wilde, Knt., Judge of her Majesty's Court of Probate, with the concurrence of the Right Hon. Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, and of the Right Hon. Sir Alexander James Edmund Cockburn, Bart., Lord Chief Justice of the Court of Queen's Bench, make and issue the following amended rule and order in respect to the non-contentious business in the said Court of Probate, to take effect on and after the 11th January, 1866.

Dated the 29th day of December, 1865.

In place of rule 79 of the rules and orders in non-contentious business, it is ordered, that—

79. The registrars are to take care that the copies of wills and affidavits to be annexed to the probates or letters of administration are fairly and properly written, and are to reject those which are otherwise; but it shall not be necessary that such copies be written in the engrossing hand heretofore in use.

(Signed) JAMES PLAISTED WILDE.

Approved,
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HOMERSHAM COX, M. A., Barrister at Law.
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THE JURIST.

LONDON, JANUARY 27, 1866.

THE object of special conditions of sale with respect to title and evidence of title, is either to enable the vendor to oblige the purchaser to accept the title, notwithstanding some defect of evidence, or, it may be, some infirmity of title involving a real risk, which the vendor cannot supply or cure, or to preclude the purchaser from calling for evidence, the production of which is possible, but would involve expense, trouble, or delay. At one time special conditions were avoided as much as possible, under the apprehension that they would discourage bidders. Special conditions of some kind have now become so usual that intending purchasers frequently bid without considering the effect of the conditions, and stipulations are often inserted as a matter of routine, which are wholly unnecessary, and even inapplicable to the title in question. But when restrictive conditions as to title or evidence are advisedly made part of the contract to be signed by the purchaser, the object of them is to compel the purchaser to accept a title more or less defective in substance or in proof. Now, it is settled that a vendor may bind the purchaser to accept such title as the vendor has, so that in the absence of fraud or misrepresentation the purchaser must take the title, though it actually appears to be bad. In *Freme v. Wright* (4 Mad. 364), on a sale by the assignees of a bankrupt, the condition was in these words:—"The purchaser shall have an assignment of Mr. Howard's interest to one moiety of the estate, under such title as he lately held the same, an abstract of which may be seen at the office of Messrs. —," and though the title was defective, the purchaser was compelled to take it. But the Court said that he might, if he pleased, have an inquiry, whether the conditions were, circulated long enough before the sale to give a fair opportunity for inspecting the abstract. So in *Duke v. Burnett* (2 Coll. 337), a purchaser was compelled to take a title which he had agreed "to accept without dispute," notwithstanding a defect as to the title to the legal estate, which was within the vendor's knowledge.

In each of these cases the vendor obtained the protection he desired without disclosing the nature of the defects against which it was sought. In a recent case, however, the doctrine has been asserted, that the vendor cannot, by a general stipulation, protect himself against a defect which is known to him, without disclosing the defect. The case to which we refer is *Edwards v. Wickwar* (35 L. J., Ch., 48; 1 L. R., Eq. 68). Under an order in that case leaseholds were sold by auction, subject to the following condition:—"It will appear from the abstract that an underlease of the property was, in 1852, granted to J. S. for twenty-one years from the 25th November then last. The said J. S. is believed to have absconded, and not to have paid any rent for several years; and inasmuch as a first underlease was on the 1st October, 1864, pur-

ported to be granted by the trustees of the testator's will to the present tenant, who is in possession under it, no objection or requisition shall be made in respect of the underlease of 1852, nor of any derivative interest created thereout, nor of any underlease or tenancy prior to the said underlease of 1864." On examining the title deeds, it appeared that another underlease had been granted prior to that of 1864, which was not shewn to have been surrendered. This underlease, according to the report in *The Law Journal*, was not in the abstract, but the counterpart of it was in the vendor's possession. The vendor relied on the condition; but Sir W. P. Wood, V. C., held, that the purchaser was not bound to complete unless the vendor obtained a surrender of the underlease; and for this decision his Honor gave the following remarkable reasons:—

"It is a vendor's plain duty to disclose all the facts within his knowledge. He may protect himself by general clauses, such as the one in question, from unknown or unsuspected claims; but he is clearly bound to give the fullest information in his power. An extreme case in support of the vendor's contention is *Freme v. Wright*; but there the vendors were the assignees of a bankrupt, and they only professed to sell under such title as he lately held. The title proved bad, but there was no suppression of facts within the knowledge of the vendors. Here, on the contrary, there is a pretended candour on the part of the vendor, in disclosing one deed while he suppresses another, which is all the time in his possession. Nothing would be more mischievous than to allow a vendor (more especially when selling under an order of this Court) to force upon a purchaser anything contrary to the strictest right."

We do not see how the decision can be supported, except upon the principle stated in the judgment, that a vendor cannot protect himself by stipulation against a defect known to him, or which he has the means of knowing, unless he discloses the defect. The defect in question was doubtless merely formal; an underlease had been granted, the tenancy had been given up without the execution of a surrender, and a new tenant put in; so that if the former underlessee had claimed the possession, his claim would have been conclusively answered, under the condition for re-entry for non-performance of covenants. There was certainly no fraud in keeping back such a transaction, and the purchaser's objection could only rest on the strictest application of the Vice-Chancellor's principle. The consequences of the rule laid down in *Edwards v. Wickwar* are serious. Henceforth a vendor must not take his title into the market unless he is prepared to display before the world every defect which can be found in it. He cannot say to an intending purchaser—"As I have been in possession during so many years, under a conveyance dated in such a year, you shall not make any objection in respect of the earlier title,"—unless he has himself rigorously scrutinised the earlier title, and found it unobjectionable, in which case the stipulation would be unnecessary. Nay, as defect of title and defect of proof are indistinguishable, a general stipulation that the purchaser shall not

make any objection on the ground of the vendor's inability to produce any title deed prior to a certain date would be unavailable, unless accompanied by a statement of the nature and effect of every deed to which it was intended to apply.

In short, to say that general conditions against defects are inoperative if the vendor does not at the same time give the fullest information in his power as to those defects, is to say that no contract shall limit a purchaser's right to a clear and well-proved title for sixty years, unless the contract sets forth a complete abstract of the title as it stands, and that no restrictive condition shall operate unless it is associated with a commentary pointing out in detail the particulars to which it applies.

A general condition against any defect of title or evidence within the terms of the condition implies that there are such defects, and gives the purchaser an opportunity of making further inquiry. If he is willing and agrees to take his chance without further inquiry, he cannot complain of being deceived; and, in the absence of fraud, we submit that it is the duty of a court of equity to hold him to his contract. We are not here speaking of artfully contrived catching conditions, which suggest, but do not absolutely assert, a better state of things than that which really exists. The condition in *Edwards v. Wickwar* was not a condition of that kind; nor is it to such conditions more than to others that the Vice-Chancellor's observations apply.

COURT OF PROBATE.

ALTERATION AS TO STAMPS.

ON and after the 1st January, 1866, the stamps payable in this registry in respect of probates and letters of administration, and the papers connected therewith, are no longer, as heretofore, to be placed on the documents to which they refer, but are to be affixed to forms especially provided for the purpose. The forms may be obtained at any of the law stationers, and practitioners are requested to use them at once.

DIRECTIONS FOR USING THE FORMS.

The practitioner is to insert in the vacant column on the left-hand page the amount of each fee he conceives to be payable in respect of the business in hand, giving the total amount of fees below, and is on the right-hand page to place stamps of equal value.

The receiver will, after seeing that the amount is *prima facie* correct, place his initials against it, and deface a corresponding amount of stamps, returning any which may happen to be in excess, and cancelling those which belong to his own department.

A. F. BAYFORD, Senior Registrar.

COURT OF QUEEN'S BENCH.

HILARY TERM, 29 VICTORIA.—Jan. 22.

This Court will, on Thursday, the 1st, Friday, the 2nd, and Saturday, the 3rd days of February next, and also on Friday, the 9th, and Saturday, the 10th days of the said month of February, hold sittings, and will proceed in disposing of the cases in the New Trial, Special, and Crown Papers, and any other matters then pending; and will also hold a sitting on Saturday, the 17th day of the said month of February, for the purpose of giving judgments only.

BY THE COURT.

Court Papers.

EQUITY SITTINGS, AFTER HILARY TERM, 1866.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Thursday	Feb. 8	{ First Seal.—Appeal Motions and Appeals.
Friday	9	{ Petitions and Appeals.
Saturday	10	{ Appeals.
Monday	12	{ Appeals.
Tuesday	13	{ Appeals.
Wednesday	14	{ Appeals in Bankruptcy and Appeals.
Thursday	15	{ Second Seal.—Appeal Motions and Appeals.
Friday	16	{ Appeals.
Saturday	17	{ Appeals.
Monday	19	{ Appeals.
Tuesday	20	{ Appeals.
Wednesday	21	{ Appeals in Bankruptcy and Appeals.
Thursday	22	{ Third Seal.—Appeal Motions and Appeals.
Friday	23	{ Appeals.
Saturday	24	{ Appeals.
Monday	26	{ Appeals.
Tuesday	27	{ Appeals.
Wednesday	28	{ Appeals in Bankruptcy and Appeals.
Thursday ..	March 1	{ Fourth Seal.—Appeal Motions and Appeals.
Friday	2	{ Appeals.
Saturday	3	{ Appeals.
Monday	5	{ Appeals.
Tuesday	6	{ Appeals.
Wednesday	7	{ Appeals in Bankruptcy and Appeals.
Thursday	8	{ Fifth Seal.—Appeal Motions and Appeals.
Friday	9	{ Appeals.
Saturday	10	{ Appeals.
Monday	12	{ Appeals.
Tuesday	13	{ Appeals.
Wednesday	14	{ Appeals in Bankruptcy and Appeals.
Thursday	15	{ Sixth Seal.—Appeal Motions and Appeals.
Friday	16	{ Appeals.
Saturday	17	{ Appeals.
Monday	19	{ Appeals.
Tuesday	20	{ Appeals.
Wednesday	21	{ Appeals in Bankruptcy and Appeals.
Thursday	22	{ Seventh Seal.—Appeal Motions and Appeals.
Friday	23	{ Petitions and Appeals.
Saturday	24	{ Appeals.

N.B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Thursday	Feb. 8	{ First Seal.—Appeal Motions and Appeals.
Friday	9	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	10	{ Appeals.
Monday	12	{ Appeals.
Tuesday	13	{ Appeals.
Wednesday	14	{ Appeals.
Thursday	15	{ Second Seal.—Appeal Motions and Appeals.
Friday	16	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	17	{ Appeals.
Monday	19	{ Appeals.
Tuesday	20	{ Appeals.
Wednesday	21	{ Appeals.
Thursday	22	{ Third Seal.—Appeal Motions and Appeals.
Friday	23	{ Petitions in Lunacy, Appeal Petitions, and Appeals.

Saturday	24	} Appeals:	
Monday	26		
Tuesday	27		
Wednesday	28		
Thursday .. March 1		} Fourth Seal.—Appeal Motions and Appeals.	
Friday	2		
Saturday	3		
Monday	5		
Tuesday	6	} Appeals.	
Wednesday	7		
Thursday	8		
Friday	9		
Saturday	10	} Fifth Seal.—Appeal Motions and Appeals.	
Monday	12		
Tuesday	13		
Wednesday	14		
Thursday	15	} Appeals.	
Friday	16		
Saturday	17		
Monday	19		
Tuesday	20	} Sixth Seal.—Appeal Motions and Appeals.	
Wednesday	21		
Thursday	22		
Friday	23		
Saturday	24	} Seventh Seal.—Appeal Motions and Appeals.	

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Thursday Feb. 8		} First Seal.—Motions and General Paper.	
Friday	9		
Saturday	10		
Monday	12		
Tuesday	13	} General Paper.	
Wednesday	14		
Thursday	15		
Friday	16		
Saturday	17	} Second Seal.—Motions and General Paper.	
Monday	19		
Tuesday	20		
Wednesday	21		
Thursday	22	} General Paper.	
Friday	23		
Saturday	24		
Monday	26		
Tuesday	27	} Third Seal.—Motions and General Paper.	
Wednesday	28		
Thursday .. March 1			
Friday	2		
Saturday	3	} General Paper.	
Monday	5		
Tuesday	6		
Wednesday	7		
Thursday	8	} Fourth Seal.—Motions and General Paper.	
Friday	9		
Saturday	10		
Monday	12		
Tuesday	13	} General Paper.	
Wednesday	14		
Thursday	15		
Friday	16		
Saturday	17	} Fifth Seal.—Motions and General Paper.	
Monday	19		
Tuesday	20		
Wednesday	21		

Thursday	15	} Sixth Seal.—Motions and General Paper.	
Friday	16		
Saturday	17		
Monday	19		
Tuesday	20	} General Paper.	
Wednesday	21		
Thursday	22		
Friday	23		
Saturday	24	} Seventh Seal.—Motions and General Paper.	

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Lincoln's Inn.

Thursday Feb. 8		} First Seal.—Motions, Adjourned Summons, and General Paper.	
Friday	9		
Saturday	10		
Monday	12		
Tuesday	13	} General Paper.	
Wednesday	14		
Thursday	15		
Friday	16		
Saturday	17	} Second Seal.—Motions, Adjourned Summons, and General Paper.	
Monday	19		
Tuesday	20		
Wednesday	21		
Thursday	22	} Third Seal.—Motions, Adjourned Summons, and General Paper.	
Friday	23		
Saturday	24		
Monday	26		
Tuesday	27	} General Paper.	
Wednesday	28		
Thursday .. March 1			
Friday	2		
Saturday	3	} Fourth Seal.—Motions, Adjourned Summons, and General Paper.	
Monday	5		
Tuesday	6		
Wednesday	7		
Thursday	8	} General Paper.	
Friday	9		
Saturday	10		
Monday	12		
Tuesday	13	} Fifth Seal.—Motions, Adjourned Summons, and General Paper.	
Wednesday	14		
Thursday	15		
Friday	16		
Saturday	17	} Sixth Seal.—Motions, Adjourned Summons, and General Paper.	
Monday	19		
Tuesday	20		
Wednesday	21		
Thursday	22	} General Paper.	

Friday	23	Petitions, Adjourned Summonses, and General Paper.
Saturday	24	Short Causes, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir JOHN STUART

At Lincoln's Inn.

Thursday	Feb. 8	First Seal.—Motions and Causes.
Friday	9	Petitions and Causes.
Saturday	10	Short Causes and Causes.
Monday	12	
Tuesday	13	Causes.
Wednesday	14	
Thursday	15	Second Seal.—Motions and Causes.
Friday	16	Petitions and Causes.
Saturday	17	Short Causes and Causes.
Monday	19	
Tuesday	20	Causes.
Wednesday	21	
Thursday	22	Third Seal.—Motions and Causes.
Friday	23	Petitions and Causes.
Saturday	24	Short Causes and Causes.
Monday	26	
Tuesday	27	Causes.
Wednesday	28	
Thursday	March 1	Fourth Seal.—Motions and Causes.
Friday	2	Petitions and Causes.
Saturday	3	Short Causes and Causes.
Monday	5	
Tuesday	6	Causes.
Wednesday	7	
Thursday	8	Fifth Seal.—Motions and Causes.
Friday	9	Petitions and Causes.
Saturday	10	Short Causes and Causes.
Monday	12	
Tuesday	13	Causes.
Wednesday	14	
Thursday	15	Sixth Seal.—Motions and Causes.
Friday	16	Petitions and Causes.
Saturday	17	Short Causes and Causes.
Monday	19	
Tuesday	20	Causes.
Wednesday	21	
Thursday	22	Seventh Seal.—Motions and Causes.
Friday	23	Petitions and Causes.
Saturday	24	Short Causes and Causes.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

Before the Vice-Chancellor Sir W. P. WOOD.

At Lincoln's Inn.

Thursday	Feb. 8	First Seal.—Motions and General Paper.
Friday	9	General Paper.
Saturday	10	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	12	
Tuesday	13	General Paper.
Wednesday	14	
Thursday	15	Second Seal.—Motions and General Paper.
Friday	16	General Paper.
Saturday	17	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	19	
Tuesday	20	General Paper.
Wednesday	21	
Thursday	22	Third Seal.—Motions and General Paper.

Friday	23	General Paper.
Saturday	24	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	26	
Tuesday	27	General Paper.
Wednesday	28	
Thursday	March 1	Fourth Seal.—Motions and General Paper.
Friday	2	General Paper.
Saturday	3	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	5	
Tuesday	6	General Paper.
Wednesday	7	
Thursday	8	Fifth Seal.—Motions and General Paper.
Friday	9	General Paper.
Saturday	10	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	12	
Tuesday	13	General Paper.
Wednesday	14	
Thursday	15	Sixth Seal.—Appeal Motions and General Paper.
Friday	16	General Paper.
Saturday	17	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	19	
Tuesday	20	General Paper.
Wednesday	21	
Thursday	22	Seventh Seal.—Motions and General Paper.
Friday	23	General Paper.
Saturday	24	Petitions, Short Causes, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

CAUSES ENTERED AFTER THE FOURTH DAY OF HILARY TERM.

COURT OF QUEEN'S BENCH.

NEW TRIALS.

Midd.—Kennard v. Great Western Railway Co.	Lond.—Webb v. Rennie
— Falcke v. Gooch	— Turner v. Walker
— Landour v. South-eastern Railway Co.	— Beard v. Goodacre
— Wood v. Boosey	— Chapman v. Groyther
— Snell v. Tucker	Liverp.—Swarbrick v. Williams & ors. (Rule and D. to be argued together).

REPORT TO THE LORD CHANCELLOR, AND TO THE COMMISSIONERS OF PATENTS FOR INVENTIONS.

In further compliance with the directions in your letter of the 3rd May, 1864, we have proceeded to inquire into the charges made against Mr. Bennet Woodcroft, and have also made a general and particular inquiry into the management of the Patent Office, and the modes of proceeding therein, together with the particulars of the duties required from the several officers there employed, and the manner in which those duties have been performed by the present staff of officers, with a view of reporting on such matters (as desired by your letter), and of stating whether the arrangements now in force are in our opinion susceptible of any, and what, improvements which might give greater efficiency to the whole office.

We have also borne in mind your desire that we should inquire into the charges made against Mr. Leonard Edmunds, the late clerk of the patents.

But in view of what has already occurred, it has be-

come unnecessary for either Mr. Woodcroft or any other of the officers to furnish us with any further information relating to Mr. Edmunds; and although several matters have been incidentally brought to our notice which, if he had still retained his offices, we should have desired to remark upon, they are not of such importance as to render further comment necessary; and therefore, so far as Mr. Edmunds is personally concerned, we propose to make no further report.

As to the charges against Mr. Woodcroft, we have given Mr. Edmunds full and repeated notice of our intention to inquire into them, and of our readiness to receive any information from him in support of them, and we have given him ample time and opportunity for such purpose.

He has, however, given us no further assistance than is contained in the letters which you forwarded to us.

We have now carefully inquired into all the charges against Mr. Woodcroft.

First, as to the charges in relation to the three bills for abridgments of Messrs. Walenn, Coryton, and Foster, brought forward by Mr. Edmunds in his letter to the commissioners, dated February, 1864—

We find that in 1859, Mr. Woodcroft received from Mr. Edmunds three cheques for those gentlemen, amounting respectively to 266*l.* 7*s.*, 249*l.* 16*s.*, and 344*l.* 15*s.*; that Mr. Woodcroft in substance paid them at the time only 200*l.*, 200*l.*, and 250*l.*, having arranged with them that they should place at his credit, at his banker's, the sums of 66*l.* 7*s.*, 49*l.* 16*s.* and 94*l.* 15*s.* respectively (total, 210*l.* 18*s.*)

The rate at which these gentlemen were employed was 7*s.* for each abstract, but included in this bargain was the agreement to make indices, and to furnish notes for an introduction or preface.

The abridgments having been finished, although the indices were not made, and the notes were not furnished, it was certainly known what payment would be eventually due to each gentleman; and for their convenience the whole sums were obtained by Mr. Woodcroft, but the smaller sums above mentioned were retained by him, with their consent, as a pledge for the completion of their work.

Eventually all has been paid to them, and no complaint is made by them.

We have found no indication of any corrupt or improper motive in this arrangement on the part of Mr. Woodcroft.

Indeed, Mr. Edmunds, in bringing forward these charges, says that he entirely acquits Mr. Woodcroft of any intentional wrong in the money sense, but that he must be found guilty of conceit and stupidity—stupid conceit in not acknowledging his error, and intense stupidity in the manner which he carried out and covered his fault. "He preferred the crooked path, after his manner," says Mr. Edmunds.

We concur with Mr. Edmunds in acquitting Mr. Woodcroft of any dishonesty, but we do not concur in the charge of conceit or stupidity.

Another charge by Mr. Edmunds against Mr. Woodcroft is, that he put a number of specifications of patents upon spinning into the hands of his brother, Mr. Zenas Woodcroft, and secretly employed him in making abridgments of them; and that Mr. Woodcroft used Mr. Brierly (who had been employed in making abridgments upon the same subject) as a tool to cover his secret transactions, and to obtain payment for Zenas Woodcroft, and that Brierly made himself an accomplice.

We have carefully and fully examined Mr. Brierly upon this subject.

Mr. Zenas Woodcroft died in June, 1863.

In 1859 a number of specifications were placed in his hands for abridgment by his brother, Mr. Bennet

Woodcroft, who had the authority of the commissioners to select such persons for the task as he thought best qualified.

We have received satisfactory proof that Mr. Zenas Woodcroft was well qualified for the task, and that the abridgments made by him (between 700 and 800) were properly done.

But he became ill, and it was arranged between Mr. Bennet Woodcroft and Mr. Brierly (who himself made between 2000 and 3000 abridgments on the same subject of spinning), that Mr. Brierly should undertake the task of revising and indexing the whole series (Mr. Zenas Woodcroft's and his own), no inconsiderable part of the whole work. For want of the index none of Mr. Zenas Woodcroft's work was complete, and in strictness he had earned no pay.

And, therefore, the charge for the whole of the abridgments, those made by Zenas Woodcroft and those made by Brierly was made in Brierly's name only, and he paid over to Zenas Woodcroft an amount proportioned to the number of his abridgments, reserving the right to have from Mr. Zenas Woodcroft or his representatives a repayment of a fair sum in respect of revising and indexing those abridgments (for the work is not even yet complete), and Mr. Brierly anticipates no difficulty in obtaining such repayment.

We had satisfactory evidence that these arrangements were caused only by the ill-health of Mr. Zenas Woodcroft, and not by any want of fitness on his part, nor by reason of the superior ability of Mr. Brierly.

Indeed, Mr. Edmunds has not questioned the ability or fitness of Mr. Zenas Woodcroft for the work; and we are unable to discover any improper motive or undue partiality on the part of Mr. Woodcroft in thus employing his brother, who appears by early habits and education to have been in all respects duly qualified for the task.

We, therefore, find that Zenas Woodcroft was properly qualified; that his work was properly done; that payment being taken by Brierly, in his own name, for both, was a matter of arrangement, for mutual convenience, without corrupt motive.

Another charge made by Mr. Edmunds against Mr. Woodcroft was, that he had treated Mr. Foster improperly in respect of abridgments of specifications, and had withheld employment from him to which he was entitled.

Mr. Foster met us at the Patent Office, and went fully into the whole case.

We think it unnecessary to set out the details.

Mr. Foster is a Chancery barrister, and, in substance, his charge against Mr. Woodcroft is, that Mr. Woodcroft had authorised Mr. Edmunds to promise him (Mr. Foster) permanent employment in abridging specifications, or at all events had written such letters to Mr. Edmunds as fairly warranted Mr. Foster in believing that Mr. Edmunds had a right to pledge Mr. Woodcroft to give permanent employment to Mr. Foster.

Upon a full consideration of all the evidence, we find that Mr. Woodcroft made no promise to Mr. Foster of permanent employment; that he did not authorise Mr. Edmunds to make any such promise; and that he gave Mr. Foster no reasonable ground for believing that Mr. Edmunds was authorised to promise Mr. Foster permanent employment.

We, therefore, find this charge also unsustained.

Again: Mr. Edmunds charges Mr. Woodcroft with the authorship or instigation of articles in periodical works reflecting on his proceedings.

He has furnished no proof.

Mr. Woodcroft has denied to us, in the strongest and most unqualified terms any connexion with (or knowledge of) these articles, and we believe him.

We shall now proceed to report upon the subject first mentioned in the letter of the Lord Chancellor and the commissioners of the 3rd May, 1864, namely, to the management of the Patent Office as at present constituted, and the modes of proceeding therein, together with the particulars of the duties required from the several officers, and the manner in which such duties have been performed by the present staff of officers, and to the question whether the arrangements now in force are, in our opinion, susceptible of any, and what, improvements which may give greater efficiency to the office.

We have carefully inquired into the constitution of the Patent Office, the duties performed by the several officers, and the management of various branches of the establishment.

The state of the patent law before the passing of the Patent-law Amendment Act in 1852, gave little or no indication of the means which were requisite to carry into effect the new law, and to enable inventors and the public to obtain the whole of the advantages to be derived from it.

The establishment for working the law was therefore formed upon a scale much too limited, and it has been found necessary from time to time to increase the number of officers and servants employed by the commissioners, and to add two new branches to the establishment, viz. a library and a museum, as experience and the wants of the public suggested the introduction of those changes.

It appears to us, that the value and importance of the Patent Office have not been duly appreciated, and that the time has arrived when it ought to be put upon a different footing.

The Patent-law Amendment Act, 1852, authorised the Commissioners of Patents, with the consent of the Treasury, to appoint such clerks and officers as the commissioners might think proper. Patents granted under the old law for England were, prior to the passing of the act, prepared in the office of the clerk of the patents; and after the passing of the act the commissioners deemed it expedient to place the clerk of the patents at the head of their office as their clerk, and in that way the two offices, viz. the office of the clerk of the patents (so far as respects patents for inventions) and the office of clerk to the Commissioners of Patents were in effect united, and have ever since together formed "the Patent Office."

The Patent Office has, however, always been treated as consisting of two divisions, called respectively "the patent division" and "the specification division." The patent division is that in which all the proceedings take place upon applications for and sealing letters-patent, and upon applications for leave to enter disclaimers and memorandums of alteration. In that division of the office specifications, disclaimers, and memorandums of alteration are filed; assignments, licenses, &c., are registered; and some other formal proceedings take place.

The patent division of the office, so far as regards the proceedings upon petitions for patents up to and including the preparation of the warrants for sealing patents, and also the proceedings upon applications for leave to enter disclaimers and memorandums of alteration, is under the management of the Commissioners of Patents. In all other respects it is an office of the Court of Chancery, and under the jurisdiction of the Lord Chancellor.

The specification division is under the management of the Commissioners of Patents, and the officers and other persons employed in that division of the office have to perform multifarious duties relating to the printing, arranging, and indexing specifications and disclaimers, selling prints of specifications and other publications, and the management of the library.

It was unfortunate that a person so unfit as the late clerk of the patents should have been placed at the head of the office, and if there had not been several officers of ability and energy in the Patent Office, who exerted themselves to the utmost to carry into effect the new law, the public would have derived little, if any, benefit from the change of the law effected by the Patent-law Amendment Act; and we think that they are entitled to great credit for the manner in which they have formed their system, distributed their duties amongst themselves, and discharged them.

Left to themselves for years without any superintending head in matters of detail, they have had to frame a system as well as work it, and we think it due to the present staff of officers to express our sincere opinion that they have discharged their duty with diligence, intelligence, and conscientiousness.

Mr. Edmunds who, as clerk of the patents and clerk of the commissioners, assumed the right of controlling the duties of both offices, and of late years exercised it as we have described in our previous reports, in the earlier years left the officers very much to themselves, and before the passing of the new law greatly neglected the duties of his office of clerk of the patents.

Mr. Ruscoe has stated that from 1833 to 1852 (nineteen years), Mr. Edmunds did not attend at the office twenty times; that for three consecutive years, from 1839 to 1842, he did not attend once; that from 1852 to 1864 his attendance at the office during six months in the year, whilst Parliament was sitting, would average three days in a month (for a short period of each day), and that during the remainder of the year he was entirely absent.

Notwithstanding this neglect of his duties by Mr. Edmunds, the establishment is now one of great magnitude and growing importance, and we think it imperatively requires to have the superintendence of a superior officer having the knowledge and skill requisite to enable him to direct and control every department of it according to the provisions of the statutes and the regulations of the commissioners. We think that such an officer should give daily attendance at the office (except during the ordinary vacations), and that his salary should not be less than 1500*l.* a year.

This officer might be denominated secretary of the Patent Office, or master of the Patent Office, or principal of the Patent Office, or by any other appropriate name.

Subordinately to the commissioners, and taking from them all their orders for the regulation and dispatch of business in the office, the entire control of its details should rest upon his responsibility and under his daily superintendence.

He should act as secretary to the commissioners, keeping proper books of their acts and orders; he should be the sole recognised financial officer, responsible to the auditors of public accounts.

He should assist in the practical dispatch of business in the office, interposing in all matters of difficulty, reading the letters received in the office, and writing or directing the replies, or delegating particular branches of correspondence to other officers, with such controlling directions and occasional interference as may seem expedient to him.

He should give his best assistance also to the law officers whenever called upon.

(To be continued).

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THE JURIST.

LONDON, FEBRUARY 3, 1866.

WINSOR v. THE QUEEN.

THE subject of the discharge of the jury in cases of disagreement in criminal cases is one of such vast importance that we shall lose no time in presenting our readers with a report of the above case, and now give some comments upon it. It is of the utmost importance to understand clearly what is the exact effect of the *decision*, and the legal grounds upon which it must rest; the more so because some of the doctrines *laid down* are of such an alarming character, and so tend to revolutionise our whole system of criminal procedure, that it is of the last importance that it should be clearly understood that much that was *laid down* was not judicially decided. Indeed, when the decision comes to be looked at carefully, it will be seen that it comes, happily, to very little; and that really nothing, or nothing that was new or undetermined, has been decided at all. The record contained a distinct statement that it was necessary that the judges should proceed on the Monday to open the commission for the next county. Desirous of discussing this question on grounds strictly legal, we are not only entitled, but obliged, to presume that this was the fact, and that there was such an overwhelming pressure of business at Bodmin, that if the judges had *not* gone there on Monday morning the public interests would have suffered. If so, that was undoubtedly a good and sufficient cause for the discharge of the jury; and (as we pointed out in a previous article) was likewise, as an inevitable consequence, a good and sufficient legal cause for the postponement of the trial. And (as we also pointed out) there can be no doubt that a court of error cannot review the determination of a judge on a collateral question of fact. Nothing is more clear than that the decision of all such questions, either in civil or criminal cases, is for the judge; and that his decision in criminal cases is necessarily final, the only remedy, if any, in civil cases being a new trial. (*Bartlett v. Smith*, 11 M. & W. 483). And so (as we likewise pointed out) as to the decision of the judge on any matter of judicial discretion or practice. (*Richardson v. Mellish*, 9 Bing. 125). Courts of error, either in civil or criminal cases, cannot review such decisions; and so as a good and sufficient legal cause of discharge was stated on the record, and also the decision of the judge on the matter of fact which constituted it, and that also shewed a good and sufficient legal cause for the postponement upon the record as it was finally framed and returned, the court of error had no alternative, on *any* view of the case, but to give judgment for the Crown. That appears to have been the whole effect of the real judicial *decision* in the case. It is true, that it was laid down that the judge had a general discretionary power to discharge the jury for any cause; but this, again, even if not obliterated altogether, must, at all events, be received, as a judicial decision,

to cases in which, after *long* deliberation, the jury have declared that they are not likely to agree. Beyond all doubt, however, at all events on *that* condition, the Court laid down an absolute discretionary power of discharge, which cannot be reconsidered by a court of error. For this alarming position, however, no authority was or could be asserted, except a dissentient judgment of an Irish judge, delivered a few years ago, in opposition not only to the judgment of the majority of the Court, but to the deliberate and solemn judgment of the twelve judges, again and again delivered in Ireland and in England, *denouncing* any such general discretionary power to discharge the jury. As this is a common-law question, and the common law in England and Ireland is the same (*Reynolds v. Fenton*, 3 C. B. 187), the decisions of the Irish Courts are as much authorities on any common-law question as our own; and in England, as in Ireland, the judgment of Mr. Justice Crampton in *Conway's case* stood absolutely *alone*, as to the existence of this supposed discretionary power to discharge a jury; and upon reading his judgment, it will be seen that he rests that opinion entirely on the supposed authority of Foster; as to which, however, he has fallen into one of the most strange misconceptions into which a judge was ever betrayed. All that the Court or Foster say, in *Kinlock's case*, is, that there is no inflexible iron rule that a jury shall *never* be discharged. No one in his senses would ever have maintained that there was. The rule laid down on Coke's great authority, that a jury *ought* to give a verdict, almost in terms, implies some exceptions for good and sufficient legal cause; and was laid down by a lawyer for lawyers, and intended to be read with the implied exceptions to which every rule or maxim of law is subject. One of the implied exceptions to the general rule now in question was the benefit of the prisoner; as in the case mentioned by Hale, of lunacy appearing in the course of the trial. So, as in the similar case of *Kinlock*, of an application by the prisoner *before* evidence to put off the trial—for his own benefit—to enable him to raise a defence, after he had pleaded, by mistake or miscarriage, the wrong plea. Foster particularly points out that all that was in question in that case was, whether the prisoner could set up such a discharge of the jury on his own application, in bar of a second trial. Of course he could not. All legal rules are subject to exceptions arising out of other legal rules; and Coke would have said the same. But Foster, while combating the unwelcome notion, that it was an *inflexible* rule never to discharge a jury, not only does not say that there is a discretionary power to discharge the jury, but distinctly says the contrary; that the general rule is *not* to discharge the jury; and he contents himself with raising certain exceptions grounded upon certain well-known legal principles, one of which is, that a man can never take advantage of an act to which he was himself a party, and for his own benefit. He nowhere says or implies, that there is a general discretionary power; for if so, why discuss the question at all? His opinion plainly implies that there must be a good and sufficient legal course. So, Blackstone, in laying

it down that the general rule may be dispensed with in cases of evident necessity, does not lay it down or imply, that there is a general discretionary power; for that includes cases other than those of necessity. What he means is the very *contrary* of a general discretionary power; for he says the rule may be departed from in cases of evident necessity; that is, because such necessity is a good and sufficient legal cause. Again: he cannot mean that it is enough, that the necessity is evident to the judge; or if he does mean that, there is not a shred of authority for it, and all the cases imply the contrary. For it would have been idle to discuss and determine, whether in error or otherwise, whether a certain cause was good and sufficient, if a judge had a general discretionary power. Thus, in *Edward's case* (4 Taunt. 309), it was settled, upon argument, that illness of a juror was a sufficient cause; but not a word is said of a general discretionary power; on the contrary, illness is decided to be a case of necessity. Discretion, however, is not confined to cases of necessity, and it is admitted that there may be good causes for the discharge *other* than cases of necessity; as in the instance above given. So, in numerous cases it has been determined that such a cause is or is not good and sufficient; for instance, illness of the prosecutor has been held *not* sufficient; and so of the case of a relative of the prisoner being on the jury, the law having provided a remedy. These cases clearly shew that there is no discretionary power; otherwise they were all idly discussed and idly determined. For nothing is more clear than that mere judicial discretion is not subject to review. The argument that these cases were not in error appears frivolous; for a prisoner could not bring error; and if the judges deemed the matter so unimportant that they did not put the prisoner to a writ of error, but of their own motion met and condemned the proceeding, surely that only makes the argument all the stronger, that there is no such general discretionary power; and although we admit that the cases do not shew conclusively that the matter is not matter for error, they certainly do not shew that it is not, and rather tend to shew that it is. And as to the argument that until *Conway's case* the matter does not appear to have been pleaded, there is even less in it; for there are no reports of pleadings in cases of gaol delivery, until quite our own times, and then the question came before the judges in another way; and even if the matter were pleaded, it could not be carried into error without consent of the Crown; and for anything that appears, the matter may have been pleaded and overruled, upon the erroneous notion that it was matter of practice, which cannot be pleaded. If it be matter of practice, of course, as we have already said, it could not be pleaded, nor could it be reviewed in error. But, for the present, waiving that—even taking it as a matter of practice—up to the time of *Conway's case* there was not a shred of judicial authority for the existence of a general discretionary power of discharge; and, on the contrary, all the authority was against it. Mr. Justice Crampton, whose judgment has been mainly relied upon in subsequent cases, in support of such power, plainly mistook a denial by Foster of an

inflexible rule not to discharge the jury with the assertion of a general power of discharge; which, on the contrary, he expressly negatives, admitting the general rule to be *not* to discharge, and treating the case as one of exception to the rule; an exception for a good legal cause, founded upon clear legal principle. He nowhere says that the judge is conclusively and finally to decide upon the occasion or necessity for the exception, or the sufficiency of the cause. And even if he had said so, all the previous and all the subsequent authorities, with the solitary exception of Mr. Justice Crampton, declare the contrary. The judgment of Mr. Justice Crampton, therefore, stands alone, without any authority; and he has evidently fallen into the fallacy of confounding the decision of the judge, as to the existence of the *facts* which constitute a sufficient cause, with the sufficiency of the cause. The first is a matter of fact; the second is matter of law. That it is matter for error follows, we think, from this—that it relates to the act of the *Court*, in a matter which is matter of record. All that affects the validity of process, or the premises of judgment—as, for instance, jury process—surely is matter of error; and unless there is a general discretionary power to discharge, and assuming that there must be a good and sufficient cause, the *absence* of such cause, and therefore of legal cause, for not taking the verdict on the first trial, and for issuing fresh jury process for a *second*, surely is matter of error. In *Campbell v. Reg.* (11 Q. B. 799) it is implied, that supposing a venire de novo not legally issuable, it would be a good ground of error that new jury process had issued for a second trial. However, what we are mainly anxious to point out is, that this was not judicially decided; as there was, beyond all doubt, a good legal cause for the discharge stated in the error. In like manner it was not, and *could* not be, *judicially* decided in the case, that a court of assize cannot sit or take a verdict on a Sunday, or that a jury, after they have retired, cannot have refreshment allowed to them. It seems to have been taken for granted, that taking a verdict was a judicial act, on the ground that it must be recorded at the time it is taken; which is clearly contrary to the case of *Carlisle v. Reg.* (2 B. & Ad. 362), from which it appears plain that the associate could have taken a minute of the verdict on Sunday (in open court, of course), and then the jury could have been discharged or refreshed, and the verdict recorded on Monday. If for the prisoner, of course, *cadit quæstio*. If for the Crown, the course taken according to that case would have been perfectly legal. As to a special verdict, it should be given before the jury leave the box; and as to a quasi special finding, which might be imperfect or incomplete, the officer would have no authority to receive it, and the jury would be remanded until Monday. (*Bentley v. Fleming*, 1 C.B. 479). This is on the assumption that a court cannot sit judicially on a Sunday—an assumption which has not an atom of authority; and, on the contrary, there is authority the other way. (Vide 2 Mad. Hist. Exch.) And courts of assize *do* sit on Good Friday, which rests, in point of law, on the same authority.

So, as to the allowance of refreshment to a jury after they have entered; the Court has not and *could* not determine that refreshment *cannot* be allowed, for it is clearly matter of practice, and the notion that it cannot be allowed is an entire error. The oath only binds the *bailiff*; whether or not the exception at the end overrides the whole. With some inconsistency, it is argued that the object of the law was to coerce juries by starvation; and yet that the law was, not that they were to be removed with the judges when they left the county; or, admitting that they were, that they were *not* to be allowed refreshment. But if the law were to coerce the jury by starvation, they must be removed with the judge, and could not be discharged until faint and ill, or there would be no coercion. On the other hand, if they were to be removed with the judges to the next county, they must have been allowed refreshment, for that implies, at least, the lapse of several days; and there is no case on record of a jury being actually starved; yet, beyond all doubt, they were removed. In the cases in the Book of Assize, it is distinctly stated, as well-known matter, that the proper course was, in case of disagreement, to remove them to the next county when the judges went away. This necessarily *negatives* the discretionary power of discharge, and *implies* a discretionary power of allowing refreshment. Mr. Serjt. Wilson, in his edition of Hale's Pleas of the Crown, puts it, that there was coercion by starvation; and the Lord Chief Justice, in his judgment, says the same thing. But that involves, that there was no discharge until the point of starvation, i. e. of actual physical distress, had been reached; and here it was not pretended that it *had*. The jealousy of the old law on this head—as to discharge of the jury after evidence *given and closed*—arose from this: that it was, in effect, a *new trial*. And it is idle to say that such is not the object; it must have the *effect*. And the Court dismissed rather too summarily the argument drawn from the policy of our law, that there shall be no new trial in a criminal case as against the prisoner, for the reason assigned by Serjt. Wilson, that it would be monstrously unfair, as *he* cannot have a new trial. They dealt also too summarily with the argument, that, in substance, the case of disagreement, after hours of consideration, is, and must be, a case of doubt on which the prisoner ought to be acquitted. If the deliberation has been so long as to justify a discharge of the jury, surely it must have been long enough to justify a discharge of the *prisoner* on the score of *doubt*. It is making idle the rule of law, that he is entitled to the benefit of any *reasonable* doubt, to say that it must be a doubt of *all* the jurors, for *that* surely could not be a case of doubt, but a case of tolerable certainty, that the man should be acquitted. And it certainly seems strange to say that the doubt of one or more jurors, after hours of deliberation, does *not* shew reasonable degree of doubt, to which, in order to carry out the admitted rule and maxim of the law, the others ought to defer. *That* view certainly does not carry out, but nullifies, the maxims. It is clear that the other was the view of the old lawyers, and that is the reason why there are no

pleas, but *autrefois acquit*; for in such cases the jury were, no doubt, directed that they had better acquit. That also was the reason why, as it is admitted on all hands, the pressure put upon the jurors previous to the allowance of refreshment or discharge was carried to the point of physical distress; that it was in the discretion of the judge *either* to direct an acquittal, *or* to allow refreshment, *or* to discharge the jurors on the ground of danger to life, may be conceded; for illness of jurors was always a *good* cause of discharge, and the judge must determine the fact, and also exercise his discretion as to the precise course to be pursued at the point of imminent peril of it—i. e. either to avoid the peril by refreshment, *or incur* it, and then discharge the jury, *or* to direct an acquittal. But if the *jury* were discharged, the *prisoner* was deemed to be discharged, and hence was never tried again; and this, again, accounts for the absence of pleas of such discharge. Whether it was rightful or wrongful—at all events, if it was *rightful* in the few cases in which it occurred, it was deemed to preclude a second trial; for the prisoner has stood the ordeal of *trial*, and it was not *his* fault that there was no verdict. Hence, as he was never put upon his trial again, he was not put to plead the discharge. The old law was not so absurd and barbarous as supposed. Refreshment was denied until physically necessary, and then allowed at the *discretion* of the *judge*. There can be no doubt that the ancient rule of practice, against allowing refreshment to a jury after they have retired to consider their verdict, applied equally to civil and criminal cases. In the Book of Assize, the entries on the subject are cases of assize (19 Lib. Ass., p. 7, 41, p. 11); and it has always been laid down, that the allowance of refreshment did not vitiate the verdict, unless it was without the knowledge and leave of the judge; nor even then unless it should be shewn either that it was supplied by one of the parties, or that it affected the event. (Co. Litt. 227. b.; Dunc. Tri. per Pais, 248). And in civil cases it has been repeatedly held in modern times; vide *Everett v. Youells* (4 B. & Ad. 682) and *Morris v. Vivian* (10 M. & W. 136). In Buller's N. P. 308, it is laid down—"It is finable for a jury to eat at their own expense after they are departed from the box, but it will not avoid the verdict, as it will, if they eat at the charge of him for whom the verdict was given, before they are agreed on their verdict." In Co. Litt. 227. b., it is laid down, that "if the jury, after the evidence given unto them at the bar, do, at their own charge, eat or drink either before or after they be agreed in their verdict, it is finable, but it shall not avoid the verdict; but if, before they be agreed on their verdict, they eat or drink on the charge of the plaintiff, if the verdict be given for him, it shall avoid the verdict, but if it be given for the defendant, it shall not avoid it; et sic e converso." So of the cases decided, *Trevennards v. Skerrys* (Dy. 55 b.); *Rez v. Burdett* (2 Salk. 645); and *The Duke of Richmond's case* (1 Vent. 124). At all events, one would suppose that this was clearly a matter of mere practice; and if the old practice was barbarous, that it would be there that it should have been altered. But the *discharge* of the jury surely is

beyond the realm of mere practice; for it appears on the record that a particular jury have been empannelled, and if it does not, it is error. (*Rogers v. Smith* (1 Ad. & El. 772). And so if a challenge is made for cause, it must be put on the record, for the very reason, that it may be made a ground of error if it is desired to do so. (*The Mayor of Carmarthen v. Evans*, 10 M. & W. 274). And the issuing of a jury process when it is not issuable (as after a verdict on a good indictment) is clearly ground of error; whether or not, an imperfect verdict is such a case. (*Campbell v. Reg.* (11 Q. B. 799). Beyond all doubt, if the matter is one of mere practice, the judgment of the Court is strictly right; and probably their views of the proper practice are not disputed, with this addition, that refreshment should be allowed at the judge's discretion.

The strongest argument to shew that it is matter of mere practice is that so forcibly put by the Lord Chief Justice in his lucid judgment—that, in point of fact, the actual practice has greatly fluctuated and changed from time to time in the course of our legal history. But the force of this argument is very much weakened when it is borne in mind that, whether it be matter of practice or error, there would be no mode of reviewing the decision of the judge in a criminal case, at all events *ex debito justitiæ*; as error cannot be brought in such a case without the consent of the Crown, and there is no motion for a new trial in a criminal case—the only way of reviewing an error in practice. This observation has the more force when it is borne in mind that the age when the supposed power of discharge of the jury was most often asserted was an age arbitrary, oppressive, and unconstitutional; and in an age like that, it is needless to say, that when the most distinguished men were judicially murdered in political cases, and when human life was so little valued that almost every felony was capital, the common herd of felons would be executed without scruple, and there would be mighty little chance of getting points of law reserved. It is impossible to underrate the force of practice in such an age in criminal cases; while, on the other hand, the circumstance that, in later and better times, the practice has been denounced again and again by all the judges in both countries, without waiting for writ of error, is strong to shew that there is no such general discretion or power as is now set up; and if not, and if there must be a cause of discharge stated on the record (as there must be a good cause of challenge), then, though the present judgment, for the reasons we have stated, is right, the reasons for it, so far as they rest on that supposed general discretionary power, certainly cannot be supported. In point of fact, the case may lead to a change of practice, which there may be no cause to regret, and which certainly is not likely, in the hands of men like our present judges, to be abused.

GRAY'S-INN.—Thomas Norton, Esq., the Queen's Coroner and Attorney and Master of the Crown-office, having been recently called to the bench, took his seat as a bencher of the society.

Correspondence.

MARTIAL LAW.

TO THE EDITOR OF "THE JURIST."

SIR,—Permit me, as a lawyer, to express my extreme surprise at the opinion of Mr. F. Stephen, published in the papers the other day, to the effect that the proclamation of martial law in no way extends the power which every man has at common law, of resisting, if necessary, by the infliction of death, the perpetration of felonious violence. That, of course, is strictly limited to actual present imminent peril; and, in reality, the great natural right of self-defence. If I see myself actually about to be killed, I may strike down my assailant, and on the same principle I may help my neighbour in defending himself from attack. But the highest authorities in our law have laid it down in every age, that when martial law is proclaimed, the military commander has an arbitrary discretion in the exercise of force necessary for the suppression of rebellion; which, of course, implies far more than the mere resistance of actual present violence. This is laid down by Lord Hale, and the petition of right distinctly recites that in time of war (and in law rebellion is war), men may lose their lives by martial law. So, Lord Bacon (vide Hume's History, vol. 5), gave it as his opinion, that Essex, after his abortive attempt to raise a rebellion in the city, although when apprehended he was quietly in his own house, might lawfully have been convicted, and executed by martial law. Coming to our own times—from the period of the Revolution to the last year—the Mutiny Act has annually recited, that no man be "prejudged of life or limb by martial law in time of peace;" plainly implying that he may in time of war or rebellion, which is war.

This was the view affirmed and acted upon on the occasion of the Lord George Gordon riots in 1780; as any of your readers will see, who carefully consult any authentic history of that year; for instance, that of Mr. Adolphus, who states that he had direct information as to the circumstances. It is well known that the insurrection was allowed by the indecision of the authorities, to attain a terrible height, and the metropolis was in danger of destruction. Unhappily the authorities took that view of the law which the gentleman whose opinion I am contesting has conveyed, and they hesitated to assume the responsibility of a military attack upon the people. In the view thus taken, no doubt it would have been perilous enough to have done so; for if there had been any mistake, and if any one had been shot or cut down who was not actually in the commission of felony—in the very act of felonious violence—the military would have been guilty of murder. But the Attorney-General of the day took a very different view of the law—the view taken by all our highest authorities—by Hale, by Coke, by Bacon, and by Hallam. And he advised the Crown, that it was, in reality, a case of war, and that the military might act without magisterial authority, and not merely in the military execution of actual offenders—in the very act—but of wholesale attack upon the people, and shooting or cutting them down by hundreds. Accordingly, hundreds were thus cut down. Mr. Adolphus mentions the estimated numbers—some six hundred, I think—but adds, that any estimate must be far below the fact. He particularly mentions, that a great number were slain on Blackfriars-bridge, where they could hardly have been in the very act of felonious violence. Nor is it anywhere stated that the attacks of the military were limited to such portions of the mob as were actually engaged in

acts of outrage. On the contrary, it is plainly to be implied in all the accounts that it was altogether otherwise. Nor can there be any rational doubt, that many miserable creatures—mixed up in the mob by curiosity, and who themselves had committed no outrages—were slain. This was the very difficulty which paralysed the magistracy and perplexed the Privy Council. It is ridiculous to suppose that a council, comprising many eminent lawyers, were unaware that a felon might be killed in the very act of felony. It is A. B. C. of English law. And the other day a gentleman was held harmless who, by mistake, shot a man upon his premises by night, whom he supposed to be a burglar. But the difficulty was this, that, practically, the insurrection could only be put down by a wholesale attack of the military, in which many persons innocent, or, at all events, not actually engaged in felony, must necessarily be killed; and this, by the *ordinary* laws, might have been deemed murder. Apart from the particular provisions of the Riot Acts, which required the presence and co-operation of the magistracy, this was the difficulty which was met by the application of martial law under the authority of the Crown; that is, the Sovereign in Council issued orders to the military, assuming and implying a state of war, which necessarily carried with it military law. This gave the officer in command absolute arbitrary discretion, treating the case as one of war, to use his military power for the summary suppression of the insurrection; and he accordingly shot and cut the people down wherever he found them assembled, and cleared the streets in every direction, without waiting to read the Riot Act, or see if they were actually engaged in violence, or making any distinction between those who were and those who were not thus employed; and, no doubt necessarily, numbers of innocent persons were destroyed. It must have been so. It was a terrible remedy, and only justifiable by a terrible emergency; but it was so justified, and it was, in effect, martial law. The House of Commons so deemed it, and declined to meet until it was over, not deeming it fit that it should assemble during the reign of military force. It was attempted to palliate it, and to persuade them that it was not martial law; but they knew better, and would not meet until it was over. No doubt it was very soon over, for, after all, the rioters were not a very large number, and were in the midst of an overwhelming loyal majority; but while it lasted it was martial law in all its terrible rigour; and it was a sharp remedy, as it was summary. Lord Mansfield laid it down on that occasion that it was quite lawful, for that it was necessary for the suppression of rebellion. So soon as the *danger* was over, the necessity was at an end—that is, so soon as the *predominance* of the rioters was put an end to. It was not merely the cessation of actual violence; it was the cessation of any danger of its renewal, and the restoration of the supremacy of ordinary law. That is the true scope of martial law: not merely the resistance to actual outrage, but the removal of imminent danger of it, and the restoration of peace and confidence in a season of extreme public peril. When that object was attained, martial law—that is, military force—ceased, and ordinary law resumed its sway. Many of the rioters were then regularly tried, but no indictment for murder was preferred against the *military*. Yet, upon the opinion now presented to us, they must have committed many murders; nevertheless, there was not only no indictment, but no bill of indemnity to protect them. What they did must have been by martial law, for at common law private individuals cannot shoot into and cut down an unlawful assembly for the purpose of dispersing it, as distinguished from the mere resistance to actual outrage,

otherwise there would have been no necessity for the Riot Act.

It would be monstrous if a mere misdemeanour (for an unlawful assembly is no more) could enable subjects to levy civil war without the authority of their Sovereign, and shoot and slay each other at pleasure. The exercise of military force requires the authority of the Crown, and the declaration of a state of war; and this is martial law. That great constitutional writer, Hallam, supports this view, and says that there are undoubtedly extreme occasions which justify the Crown in declaring martial law. (Vol. 3, sect. Martial Law). He describes it as martial law, and as having a distinct and separate force and power, as distinguished from, though recognised by, the common law. Thus, Hallam agrees with Hale, and our highest constitutional authority concurs with our greatest oracle of the common law. It is much to be regretted that popular appeals and partisan opinions should be published which tend to mislead and distort public feeling on the subject of this terrible remedy for a terrible emergency. But I was happy to observe in the papers next day, an opinion of Mr. Headlam, the learned Judge-Advocate-General, in entire accordance with the view of the law I have ventured to present to you. I observe, however, that a correspondent seemed a little apprehensive about this doctrine of martial law. He need not be so. It only applies to periods of actual insurrection, and extreme public peril, in which it is necessary for the general safety; and, no doubt, that necessity must always be made out. A bloody insurrection of a large number of an overwhelming majority, and an apparent imminent peril of the rising of the *whole*, surely would be such an emergency. And the *danger* would last some days after the suppression or cessation of actual outrage and insurrection.

One word more: as to the indictment of the governor or any of the military commanders. No doubt, such indictments might be preferred, but a grand jury must be got to sanction them, and upon proper legal direction; and I venture to assert that there is no judge in this country who would not tell a grand jury, that before they found the bill they must have evidence that acts done by or under the authority of the governor, after a proclamation of martial law, were done, not honestly, but maliciously and wickedly, and merely under colour of martial law.

Temple, Jan. 30.

Yours, &c.,
A BARRISTER.

SEWAGE.

IN June, 1862, "all branches of the legal profession" were annoyed by receiving a prospectus of "a weekly register of *all* the cases decided in *all* the courts," to be called "The New Reports," in which they were told that "the want of a series of first-class reports, at once anticipating and auxiliary to the labours of the authorised reporters, was acknowledged by all branches of the legal profession;" that is to say, that having already five sets of reports, they wanted a sixth. Each weekly number would, "as a general rule, contain *all* the cases decided within the week, up to and inclusive of the Wednesday immediately preceding the day of publication." From this great enterprise "the commercial element" was, in fact, if not in intention, completely excluded, and "The New Reports," born in Michaelmas Term, 1862, died of starvation before Michaelmas, 1865. In the meantime the bar, provoked by this audacious attempt to commit a further nuisance, and resolving if possible to set narrow limits

to the issue of legal sewage, appointed a committee; the committee reported; the bar adopted the report; a board of works was appointed, and got into action; and at the commencement of the present year everybody was looking to see the stream of Themis again flowing in one single channel, clear and unflooded. Let us compare the prospect in 1865 with that in 1866:—

Reports published in

- | 1865. | 1866. |
|--------------------------------|---|
| 1. Regulars in all the Courts. | 1. Law Reports in all the Courts. |
| 2. Law Journal. | 2. Best & Smith, Q. B. |
| 3. Jurist. | 3. Hurlstone & Coltman, Exch. |
| 4. Law Times. | 4. Harrison & Rutherford, C. P. |
| 5. Weekly Reporter. | 5. Beavan. |
| | 6. Law Journal. |
| | 7. Jurist. |
| | 8. Law Times. |
| | 9. Weekly Reporter. |
| | 10. Notes of Cases (Law Journal). |
| | 11. Legal Notes for the Week (Solicitors' Journal). |
| | 12. The Weekly Notes of the Council of Law Reporting. |

Such are the immediate results, in quantity and diversity, of the agitation to put down competition, and to reduce the number, and improve the quality, of the reports.

The results in quality are not so easily exhibited, but they are worthy of consideration. As claiming the first place in dignity and merit, let us inspect the Law Reports, and compare their cases in the Common Pleas with those reported by Messrs. Harrison & Rutherford, the successors of Mr. Scott, reporting with the express approbation of the judges.

The reports of cases in the Common Pleas "in and after Michaelmas Term, 1865," occupy 52 pages of the Law Reports, and comprise six cases. The first part of Messrs. Harrison & Rutherford's Common Pleas Reports, for the same term, consists of 84 smaller pages, and comprises eight cases. Of these cases, *Gibson v. Holland* alone is found in both series! If we examine the five cases peculiar to the Law Reports, we shall be at no loss to understand why some of them, at least, do not appear in Harrison & Rutherford. *Gibson v. Holland*, which is common to both series, decided that a note of a contract, addressed by the party to be charged to his own agent, is a memorandum within the 17th section of the Statute of Frauds—a point sufficiently novel and important to justify the report. The report in Harrison & Rutherford is shorter and neater than that in the Law Reports.

Jegon v. Vivian (1 L. R. 9) was a case on the construction of a very oddly worded leasing power in a will containing very peculiar limitations; one of those legal puzzles which ought to be decided by a throw of dice, not involving any principle of law, or any rule of construction. The report of this case, utterly worthless for any of the purposes for which the Law Reports were intended, occupies 29 pages.

Tweed v. Mills (1 L. R. 39) will be found to decide only that a contract by A. to sell all his interest in a public house does not imply a contract for a good title. The marginal note, by the insertion of the word "valid" in the last line but one, entirely misstates the effect of the decision.

The case of *Galli v. Mongruel* teaches us that the requirements of the Common-law Procedure Act as to the indorsement on a writ of summons must be complied with, and it teaches nothing more. In *Re Alice*

Rogers (Id. 47), an order had been granted, enabling a married woman to dispose of her reversionary interest in personalty without her husband's concurrence, on the ground that they were living apart by mutual consent. An application by the husband to rescind the order, *after it had been acted upon*, on the ground that though they were living apart, yet at the time of granting the order, he occasionally visited and slept with his wife, was refused; and for this alone the case is reported!

From *Gray v. Wilson* (1 L. R. 50) we learn, that on a reference to the Master, under the Common-law Procedure Act, of an action on a building contract, he may act upon the report of a surveyor of his own choosing, and that is all we learn from it.

Such are the contents of the first instalment of the Common Pleas reports, prepared and published under the superintendence of the Council of Law Reporting and their common-law editor, whose salary is 600*l.* per annum.

On the other hand, of the cases peculiar to Harrison & Rutherford, it may be observed, that *Edgell v. Day* (p. 1) is important, because it decided a point on the law of vendors against the authority of Lord St. Leonards; that *Williams v. Golding* (p. 18) and *Willson v. The London, &c. Company* (p. 29) respectively decided doubtful points on the construction of the Metropolitan Building Act and the Merchant Shipping Act; that *Wigan v. Strange* (p. 41) is the Great Alhambra case; that *Maraden v. The City and County Insurance Company* (p. 53) is a case on the important and difficult question as to what is, and what is not, loss "originating from fire;" that *Tuckett v. Green* (p. 63) involved a question as to the power of the Master, in a reference under the Common-law Procedure Act; and *Goodyear v. The Mayor, &c. of Weymouth* is an important authority on questions frequently arising under contracts for works.

Turning to the equity cases in the Law Reports, we observe the following marginal note of the point in *Re Tresidder* (p. 21):—"A composition deed appearing to be bona fide, and containing a provision that anything therein contained should only be binding on the creditors who executed, will not be invalid because it contains provisions for payment of some small extra costs, for verification of debts, for excluding creditors who do not prove in time, or for administering the estate as on a bankruptcy." The report shows that the objection as to the provision for costs was overruled on account of its minuteness, and not for the reason suggested in the marginal note, and that no one committed the absurdity of suggesting that the provision for administering the estate as in bankruptcy could invalidate the deed.

The Council of Law Reporting make the following announcement as to their "Weekly Notes":—

"During the sittings of the Courts the Weekly Notes will be published on Saturday, and will generally comprise notes of the decisions up to and including those of the previous Wednesday. All cases of *permanent interest* noted herein will be reported in full in the Law Reports."

We do not see what concern the council has with any cases not of permanent interest, or why any such cases should be noted. The council was appointed to superintend the reporting of precedents, which are necessarily, until overruled or superseded by legislation, of permanent interest. They have nothing to do with publication of mere news. The uses of the Weekly Notes, if they are to be useful, will be—first, to give the earliest intimation of decisions to be afterwards reported in full; and, secondly, to furnish those who, for any reason, do not take in the Law Reports, with a complete summary of the contents of the Law

Reports. Any note of a case which is not to be reported in full is either beside the purpose of law reporting, or a nuisance, constituting the "Weekly Notes" a second series of reports, to be preserved, noted up, and searched with as much care as the fuller series.

The worst effect of the publication of the Weekly Notes has been the issue of rivals to them by the proprietors of the Law Journal and of the Solicitors' Journal and Weekly Reporter. The Solicitors' Journal of Jan. 20 has the following announcement:—"Our readers will perceive in our impression of to-day a new heading, 'Legal Notes for the Week.' These are designed to keep the profession au courant with the course of the courts, especially with reference to cases not raising any points of law admitting of a report. The intention is, if possible, to give a short note of every case which finds its way into the printed lists in any court of law or equity (except unopposed petitions and short causes), and which does not seem worthy of a report in the Weekly Reporter; so that, by combining these notes with the Weekly Reporter, the profession will have a complete record of all the proceedings in 'contentious matters,' more or less fully reported according to the value of the case, from the mere mention of a case which possesses no interest except for the parties concerned, up to the most complete and detailed report. It is hoped that this plan, by making it, as far as possible, a moral impossibility that anything of the slightest value or interest can escape notice, will render this system of reports as complete as in the nature of the case is practicable." In other words, the whole sewage of the courts is to be collected and stored up, and the profession are asked to become mud-larks, and rake and grub in it for such articles of value as it may contain. It only remains for the Law Times to complete the scheme, by publishing also notes of "unopposed petitions and short causes."

Of course, the Council of Law Reporting are not answerable for these absurdities. They are answerable, however, for their own Weekly Notes, and they are very gravely accountable for the bad quality of their reports, and for the general impolicy of their proceedings. The immediate result of their proceedings has been a material increase of the evil which they were appointed to quell; and while for much of this increase they are directly responsible, there is nothing in the character of their own reports entitling them to any preference over their rivals, or giving ground for the expectation that they will ultimately prevail over them. If a Council of Law Reporting, with two editors at 600*l.* per annum each, and a most monstrous staff, cannot start with a presentable volume of reports, the profession will consider whether it is not, after all, safer to put up with competition, and its inconveniences, than exclusively to commit the important duty of recording the growth of the law to the slovenly superintendence of an irresponsible committee.

LAW REPORTING.

The following appeared in "The Bookseller" of the 1st inst. :—

TO THE EDITOR OF "THE BOOKSELLER."

Sir,—In the number of "The Bookseller" for December, 1865, appeared an article on law reporting, in which the following observation occurs:—"Overtures made to the law publishers were rejected." This is incorrect, but, no doubt, was founded on a statement which appeared in a recent circular, issued and widely distributed by the Council for Law Reporting, as follows:—

"The council, as representing the profession in a matter of public concern, were anxious to receive, and hoped that they might have received, some offer from the London law publishers; they, however, decided for themselves that their interests required them to oppose rather than assist the council. The council very much regretted, and still very much regret, this decision; but they had no power to influence or change it."

Any statement that the law publishers had decided rather to oppose than assist the council, would, if allowed to stand uncontradicted, no doubt operate seriously to our prejudice; and we therefore beg, on our own behalf, to deny in the most unqualified manner, that we ever came to such decision, and that, without further comment, we can only say, that, up to the time at which the council invited our reporters to join the scheme, we were in daily expectation of receiving some proposal from them, or at least an invitation that they were prepared to receive one from us; and in either case we should have gladly co-operated with the council. We never, however, received any communication, either directly or indirectly, on the subject.

HENRY BUTTERWORTH & CO.
RICHARD STEVENS & SONS.

January 18, 1866.

REPORT TO THE LORD CHANCELLOR, AND TO THE COMMISSIONERS OF PATENTS FOR INVENTIONS.

(Continued from p. 40).

We are satisfied that ample occupation will be afforded to such an officer conscientiously bent on making himself useful.

And we are equally certain that such an officer of high character, attainments, and vigour might exercise a control and superintendence which would be cheerfully submitted to by the other officers, and would redound to the benefit of the public, and eventually effect a reduction of the expense of the establishment.

In particular we may report the entire acquiescence of Mr. Woodcroft, at present at the head of the office, in the appointment of such officer.

It appears to us also to be requisite that some means should be devised for bringing the state of business in the office, and the proceedings and conduct of the officers (including the principal officer himself) to the knowledge of the commissioners from time to time, and this we think would be best effected by some one at least of the commissioners, or some one appointed by them, visiting the office from time to time.

We think that the office of clerk of the patents, performing his duty by deputy, as Mr. Edmunds did, ought no longer to exist.

We think, too, that the office of clerk of the commissioners, such as it has existed in the hands of Mr. Edmunds, is useless, and ought to be abolished.

If he had acted even as the secretary to the commissioners, issuing summonses for their meetings, keeping minutes of their proceedings, conducting their correspondence, and looking to the execution of all their orders in the office, his duties might have been useful, but too light.

In truth, no such duties have been performed, and Mr. Edmunds's task has principally consisted in receiving moneys from Mr. Ruscoe, his deputy, through his bankers, Messrs. Coutts, disposing of them as mentioned in our former reports, and, by deputy, forwarding half-yearly to the Treasury a list of the tradesmen's bills due by the office, giving credit for any

balance on the preceding account, and for the proceeds of the sales of copies of specifications, and receiving from the Treasury by half-yearly orders on the Paymaster-General the amount of such bills, and sums of 300*l.* for contingent expenses.

We humbly recommend that both of these offices should be abolished.

For the purpose of abolishing the office of clerk of the patents, legislation will of course be necessary.

It was abolished in 1832 by stat. 2 & 3 Will. 4, c. 111, and revived in 1833 by stat. 3 & 4 Will. 4, c. 84.

The duty of preparing patents, other than patents for inventions, might be advantageously transferred to the clerk of the Crown.

We think, too, that the Patent Office should be made not only the office of the Commissioners of Patents for Inventions, but also an office of the Court of Chancery; that all the duties now performed in any part of the Patent Office should be performed in that office; and that all officers appointed for the performance of the duties heretofore imposed on the clerk of the patents should be performed by officers of the commissioners, and should be appointed and removable as in the Patent-law Amendment Act provided.

Patent Division.

Up to the time of his suspension by the commissioners in December last, Mr. Ruscoe was the chief clerk of the patent division of the office, and since October last the duties of chief clerk have been discharged by the second clerk.

The duties of the chief clerk at present are to receive the petitions, declarations, and provisional specifications brought to the office by persons applying for patents, petitions for leave to enter disclaimers and memorandums of alteration; and he refers the applications to the law officers of the Crown.

He receives the sums of money payable for stamp duties and for stamps at various stages of the proceedings for obtaining patents, and he performs some other routine duties which it is unnecessary here to notice.

The references of provisional specifications are made to the law officer in pursuance of sect. 8 of the Patent-law Amendment Act. The law officer is by that section authorised "to call to his aid such scientific or other person as he may think fit." The object of this reference of a provisional specification is to ascertain whether it sufficiently describes the nature of the invention sought to be patented.

To enable the law officer to do this effectually, it is often requisite that he should have the assistance which the statute enables him to obtain; but it would not be practicable for the law officers in every case to call persons to aid them with information on the subject to which an invention may relate.

It appears to us that the chief clerk or officer of the patent division of the office should be a person of skill, who could at once give to the law officer in every case the information necessary to enable him to determine whether the provisional specification sufficiently describes the nature of the invention, and whether the invention is a manufacture or an invention for which a patent ought to be granted. And we think that that information should be furnished to the law officer in the shape of a report, by the chief clerk, accompanying the provisional specification, referred to the law officer for consideration.

If this were done, we think that the grants of patents for frivolous inventions would in many cases be prevented, and more definite information would be obtained respecting the nature of inventions sought to be patented.

We have in our former reports mentioned the way

in which the clerk of the patents and his chief clerk managed to appropriate to their own use sums of money for discounts upon the stamps used in the office.

Ever since the resignation of the late clerk of the patents, the discount (so called) upon stamps have continued to be taken, because it was understood that the Stamp-office authorities desired to avoid making any change in their accounts until a permanent alteration should be introduced by the commissioners. The money received for discounts since the suspension of the chief clerk is, however, now held by the acting chief clerk, to be applied as the commissioners shall direct.

The experience in the management of the business of the office since the resignation of the late clerk of the patents has shewn that in every case (except small stamps for printed copies, &c.) the money for stamps is paid into the office in ample time to enable the officers to obtain the stamps before they are to be used, and by the payment of the full amount of the stamp duties into the Stamp-office, a saving may be obtained of upwards of 500*l.* a year.

The Treasury advances to the Patent Office a sum of money from time to time as "imprest money," for the payment of the current petty expenses of the office; and the officers of the Patent Office might be authorised from time to time to apply a small portion of the imprest money in the purchasing of small stamps, the advances to be repaid as the money may be received for the stamps; and there could be no difficulty in keeping a proper account of the advances and repayments, which should be credited in like manner as the other accounts of the office.

The present permanent staff of officers in the patent division of the office consists of six clerks; there are also four extra clerks and four writing clerks.

This number of officers and clerks is not sufficient for the performance of the duties of this division of the office, and consequently the business of the office has fallen greatly into arrear.

The officers of the patent division have satisfied us that three additional clerks at the least are necessary for the proper discharge of the duties of the office.

The permanent clerks in this division of the office are paid by salaries of varying amounts, according to the classes to which they respectively belong, and the length of their services. The gentlemen who fill those offices have laid before us their claims to increased remuneration, urging, and it appears to us very correctly, that the remuneration which they receive is not equivalent to the salaries paid to similar officers in other departments of the public service.

We believe them all to be persons of skill, and very deserving officers, and we recommend them to the favourable consideration of the Commissioners of Patents and the Lords of the Treasury. Each of those gentlemen has made to us a statement in writing of his claims for further remuneration, and we have deposited those statements in the Patent Office, to be produced to the commissioners when required. We see no reason why the four extra clerks above mentioned should not be placed upon the permanent staff of the office. They have all been employed in the office for twelve years or more, first as writing clerks, and then as extra clerks; and we see no prospect of any diminution of the business of the office, much less such a diminution as would render the services of those clerks unnecessary.

The four writing clerks are persons who, before entering into the service of the commissioners, were writers, such as are usually employed by law stationers.

Ever since the Patent-law Amendment Act came

into operation in 1852, several of those writers have been employed in this and in the specification division of the office, for remuneration paid to them weekly, either according to the number of hours they were employed, or according to the quantity of work done. Instead of paying the remuneration to these writers out of the imprest moneys, the late clerk of the patents and his chief clerk, Mr. Ruscoe, managed to have all these writers paid by Mr. Ruscoe's uncle, a law stationer, who charged the usual law stationer's profit, viz. 50 per cent. upon the sums which he so paid; that is to say, at the end of every half year he charged the office with 150*l.* for every 100*l.* which he paid to the writers, although the amount of the imprest moneys received from the Treasury at the commencement of the half year was paid over to the law stationer.

This appears to us to have been a most unwarrantable waste of public money.

These writing clerks, we have been informed, were not all of them supplied to the office by Mr. Ruscoe's uncle, the stationer, nor was he in any way responsible for the performance of their duties.

These writers have become familiar with the business of the office, and perform their duties efficiently, and we think that they should be treated as clerks employed by the office, and should be paid in the office out of the imprest moneys advanced by the Treasury. We have been informed that the writers would prefer to be paid in this way; and some of those who are now employed in the patent division of the office have been in that employment so long, and have, we believe, performed their duties in such a manner as to have a considerable claim to increased remuneration for their services as extra clerks in the office.

(To be continued.)

CALLS TO THE BAR.

THE undermentioned gentlemen have been called to the Bar:—

LINCOLN'S-INN.—Herbert Newman Mozley, Esq., M.A. (certificate of honour first class); Thomas Brassey, jun., Esq., B.A.; Samuel Dickinson, Esq., B.A.; Thomas Frederick Kirby, Esq., M.A.; Jackson Hunt, Esq., B.A.; Byam Martin Davies, Esq., B.A.; Charles Browning, Esq.; Lancelot Shadwell, Esq.; Edward Brodie Cooper, Esq., B.A.; Edmund Salwey Ford, Esq., M.A.; David Francis Ahern, Esq.; Charles Walter Campion, Esq., B.A.; Benjamin Kisch, Esq., M.A.; Edward William Brabrook, Esq.; Henry Francis Puroell, Esq., B.A.; and John Higgins, Allen, Esq., B.A.

INNER TEMPLE.—Adolphus William Ward, Esq., M.A.; Hugessen Edward Knatchbull, Esq.; Frederick Popham Pike, Esq., B.A.; William Pollard Pattison, Esq.; Richard Bagwell, Esq., B.A.; James Penrose Ingham, Esq., B.A.; Daniel Chauncy Beale, Esq., B.A.; Octavius Leigh Clare, Esq., B.A.; Henry James Burford Hancock, Esq.; John Barber, Esq.; Maurice Barnard Byles, Esq., B.A.; Cornelius Willoughby Huddleston Fryer, Esq., M.A.; James Thomson Erskine Rogan, Esq., B.A.; George Gordon Brodie, Esq.; Thomas James Waddingham, Esq., M.A.; the Hon. Charles Douglas Richard Hanbury Tracy, M.P.; and the Hon. James Archibald Home, B.A.

MIDDLE TEMPLE.—Robert Swan, Esq., LL.B. (certificate of honour awarded by the Council of Legal Education); Edward Tyrrell Leith, Esq., LL.B.; William James Reid Hosack, Esq., B.A.; Richard Milne Redhead, Esq.; Edward Loughin O'Malley, Esq.; Joseph Miller Harrington, Esq.; Henry Edmondstone

Medlicott, Esq., M.A.; Eugene Serret, Esq.; Theodore Thomas Ford, Esq.; William Leycester, Esq.; Patrick Keon, Esq.; W. H. L. Cox, Esq.; and William Jardine, Esq.

GRAY'S-INN.—Major Edward Henry Power.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

HILARY TERM, 1866.

FINAL EXAMINATION.

At the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

1. Daniel O'Connell French, who served his Clerkship to Messrs. Yates, Son, & Martin, of Liverpool; and Messrs. Loftus, Vizard, Crowder, & Anstie, of London.

2. Charles Edward Salmon, who served his Clerkship to Mr. William Salmon, of Bury St. Edmunds.

3. George Nichols Marcy, who served his Clerkship to Messrs. Marcy & Whitcombe, of Bewdley; Mr. George Marcy, of Wellington, Salop; and Messrs. Church, Prior, & Bigg, of London.

4. Thomas Francis Rider Hammond, who served his Clerkship to Mr. Barnard Platts Broomhead, of Sheffield; and Mr. Charles Fiddey, of London.

5. Henry Selfe Leonard, who served his Clerkship to Messrs. Abbot & Leonard, of Bristol; and Messrs. Jones, Blaxland, & Jones, of London.

6. George Francis Riddiford, who served his Clerkship to Messrs. Wilton & Son, of Gloucester; and Messrs. Hayes, Twisden, Parker, & Co., of London.

7. Roger Turner, who served his Clerkship to Mr. Henry Gray Brydone, of Petworth, Sussex.

8. John Cory Monkhouse, who served his Clerkship to Messrs. Rushton & Armitstead, of Bolton-le-Moors; and Messrs. N. C. & C. Milne, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—

To Mr. French, the Prize of the Honourable Society of Clifford's Inn.

To Mr. Salmon, the Prize of the Honourable Society of Clement's Inn.

To Mr. Marcy, one of the Prizes of the Incorporated Law Society.

To Mr. Hammond, one of the Prizes of the Incorporated Law Society.

To Mr. Leonard, one of the Prizes of the Incorporated Law Society.

To Mr. Riddiford, one of the Prizes of the Incorporated Law Society.

To Mr. Turner, one of the Prizes of the Incorporated Law Society.

To Mr. Monkhouse, one of the Prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Edward Bythway, who served his Clerkship to Messrs. Bury & Sudlow, of Manchester; and Messrs. Cunliffe & Leaf, of Manchester.

Stidholme Cartmell, who served his Clerkship to Mr. John Nanson, of Carlisle; and Messrs. James & Curtis, of London.

William Outram Crewe, who served his Clerkship to Mr. Robert William Litchfield, of Newcastle, Staffordshire.

George Daintrey, who served his Clerkship to Mr. Arthur Daintrey, of Petworth.

George Henry Eaton, who served his Clerkship to Messrs. W. & C. E. Eaton, of Liverpool.

Thomas Edward Jeffes, who served his Clerkship to Messrs. W. M. & T. Hazard, of Harleston, Norfolk.

Frederick Lovell Keays, who served his Clerkship to Messrs. Fisher & Keays, of London.

Thomas Lawton, who served his Clerkship to Messrs. E. Heath & Sons, of Manchester.

Thomas Norton the younger, who served his Clerkship to Mr. Thomas Fearncombe Chorley, of London; and Mr. John Scott, of King William-street, London.

Arthur Vere Archer Powys, who served his Clerkship to Mr. Bransby William Powys, of London.

Charles Sansome Preston, who served his Clerkship to Messrs. Robinson & Preston, of London.

Aymor Holloway Sanderson, who served his Clerkship to Mr. Andrew Phillips, of Shiffnal; and Messrs. Hollings, Sharp, & Ullithorne, of London.

Thomas Pallister Young, LL.B., who served his Clerkship to Messrs. Young & Plews, of London.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidates, that their answers to the questions at the examination were highly satisfactory, and would have entitled them to prizes or certificates of merit if they had not been above the age of twenty-six:—

1. Richard Henry Clutterbuck.
2. Taylor Hughes Tomkinson, B.A.
3. Arthur Whitworth Robinson.
4. Thomas Etheridge Harper.

The number of candidates examined in this term was 114; of these 111 were passed, and 3 postponed.

By order of the Council,
E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,
London, Jan. 26, 1866.

CIRCUITS OF THE JUDGES.
(Mr. Justice WILLES will remain in Town).

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Wednesday... 7	Swansea	Lancaster
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N O T I C E.

The Office of THE JURIST is removed to No. 39, BELL YARD, TEMPLE BAR, W. C., where all communications for the Editor are requested to be addressed.

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THE JURIST.

LONDON, FEBRUARY 10, 1866.

OUR system of administration of criminal justice, whether or not the best mode of arriving at the very truth, is entitled to great respect. It is intended to, and does, afford the utmost possible opportunity to the accused of exculpating himself; in short, it is a fair trial between the Crown on the one hand and the prisoner on the other. The Queen's judges are especially careful that this intention shall be given full effect to, by requiring that all the rules of procedure shall be strictly complied with; thereby themselves setting an excellent example to all who are called upon to administer criminal justice. Our attention has been directed to a practice, which of late has been gradually gaining ground with some gentlemen who preside at quarter sessions, of omitting to take down in writing the evidence given at the trial of prisoners. It, no doubt, originated on some occasion when they were anxious to conclude the business, so as to avoid the necessity of keeping the jurors and witnesses until the next day, and, perhaps, in short undefended cases, when the witnesses were taken rapidly through their evidence; however this may be, the evil had a beginning; the chairman or deputy-chairman simply following with his eye the depositions whilst each witness was giving his evidence, taking no written note whatever, and, in summing up, merely reading to the jury the quasi evidence of each witness from the depositions, often omitting such defence as the prisoner made, and always how it affected or was affected by the evidence: thus presenting the case to the jury in the crudest manner possible, and really upon evidence which had been given elsewhere. No doubt, this was found to be a short expeditious method of disposing of the matter, but this kind of justice "made easy" is very far from fulfilling the conditions of a solemn criminal trial. If there had occurred but an instance or two here and there, probably it would not have attracted our notice, but it has happened so frequently at some quarter sessions, that we are justified in our statement that it has become more or less a practice, and one which cannot be too strongly reprobated. If country gentlemen are desirous of filling the prominent and influential post of chairman or deputy chairman, they must recollect that there are onerous and responsible duties to be performed, from the due and just discharge of which they cannot be excused; and it is competent to every man, whether or not he has received the education of a lawyer, honestly to discharge that most important duty of *taking down in writing* the evidence of witnesses at a trial. In the ordinary cases which come before quarter sessions, the committals are from petty sessions—a tribunal which, however unsatisfactory in some respects, may be sufficient for a mere preliminary investigation, but the proceedings there taken and recorded in the depositions are often of so loose and irregular a character, that they ought not to be, and

never are by the judges, permitted to afford anything more than an outline of the case for the prosecution. The judges never use the depositions at the trial except in the case of alleged discrepancy between the evidence then given and that appearing in them; in proof of which we invite the gentlemen whose conduct is the subject of our remarks, to be present at the assizes of their respective counties, and watch with care the conduct of the judges in this particular. We are perfectly aware that in some counties there is occasionally a strong county feeling with regard to a given class of offences, and a corresponding strong determination to put a stop to them; to this there can be no objection, provided the feeling does not lead to a violation of the law by those who are charged impartially to administer it. When one offender is fairly and properly convicted, the severest sentence allowed by law will more surely mark the determination to put down the particular crime, than a hundred attempts to obtain convictions by straining evidence, or improperly using that which induced the committal. There is, we are also aware, a very general feeling that every person committed for trial is guilty, and therefore ought to be found so; the gentlemen to whom we refer certainly act up to this impression, and do all in their power to procure the desired result. However objectionable this view of the matter by those who administer the law, if they acted strictly within the limits of what it permits, we should not feel disposed to interfere with their personal view of the question. The knowledge and power of distinguishing nice points of evidence can probably never be acquired except by the professional lawyer, but the performance of the plain and simple duty we have indicated, can be accomplished by the most ordinary capacity; and if any one is wanting in energy and industry sufficient for this, the sooner he is superseded the better for the interests of his county and the justice of the country.

REPORT TO THE LORD CHANCELLOR, AND TO THE COMMISSIONERS OF PATENTS FOR INVENTIONS.

(Continued from p. 51).

If the staff of clerks and writers employed in the patent division shall be increased, it will become necessary to re-arrange and re-distribute the business of the office amongst the clerks and writers, the manner of doing which must depend upon the additional number of clerks and writers employed.

We think that the management of the business of the office, prior to the resignation of the late clerk of the patents, was capable of many improvements, some of which have already been carried out, and the discussions which we had with the present officers will enable them to adopt other improvements in matters of detail with which we need not trouble the Lord Chancellor and Commissioners of Patents.

Our attention has been called to the unnecessary expenditure incurred in preparing copies of patents, &c., to be transmitted to Dublin and Edinburgh, in pursuance of the Patent-law Amendment Act.

We believe those copies to be of no value to the public, and it is to be hoped that the Legislature will be induced to repeal the provisions of the act which requires them to be sent to Dublin and Edinburgh.

The careless manner in which patentees prepare their specifications, and particularly those parts of them which consist of drawings, entails very considerable difficulties and expense upon the office; but the officers have no power to reject a specification, however imperfect, nor have they any authority to reject the copies of the specifications and drawings which patentees are required to furnish, when they vary from the originals, however great the variances may be.

The introduction of unnecessary drawings into specifications, as well as the unnecessary colouring of specification drawings, greatly increase the cost of printing specifications (no part of which is paid by the patentee), and also the expense of preparing office copies which may be required to be given in evidence.

The cost of printing one specification, viz. that of Thomas Dunn, under his patent of the 18th March, 1862, amounted to 662*l.* 11*s.*

It appears to us to be desirable, if practicable, to grant no patent for an invention until the applicant has actually filed in the Patent Office an accurate specification, containing clear and distinct claims of invention.

Whether that course could be adopted without an alteration of the law, it is not for us to say; but it appears to us very desirable for the interests of the public, that the present practice of allowing specifications to be filed after the grant of letters-patent should be discontinued.

Specification Division.

This division of the Patent Office has been established for the purpose of making available to the public the information contained in the specifications of patented inventions.

Before the Patent-law Amendment Act, 1852, came into operation, the public could only obtain accurate information respecting inventions made the subject of letters-patent, by means of expensive office copies of the enrolments.

The necessity for the change introduced under the new law, has been amply proved by the great amount of information respecting manufacturing arts which has been diffused throughout the country, and the extent (continually increasing) to which the public avail themselves of the facilities which the office affords for obtaining a knowledge of inventions patented in this and in foreign countries.

For the management of this division of the Patent Office, it was deemed necessary to appoint a person having a knowledge of practical science and the manufacturing arts.

The Commissioners of Patents, in the month of December, 1852, appointed Mr. Bennet Woodcroft to be the superintendent of the specification division of the office, and he still continues to hold that office, as well as the office of superintendent of the Patent Office Museum, to which he has since been appointed.

The officers and clerks of this division of the office are necessarily more numerous than those in the other division, and the superintendence of this division and the Patent Office Museum are sufficient to absorb the whole of Mr. Woodcroft's time.

The present permanent officers in this division are nine in number, each having the management of some particular branch of business, and a gentleman of skill employed as a linguist.

The chief clerk is a skilful draftsman, and he and his assistants have the duty of inspecting all the drawings sent into the office, and all prints of drawings prepared for the prints of specifications and other publications of the commissioners.

This chief clerk is, indeed, an officer of both divi-

sions of the office, for he has the custody of all the records of the office.

The second clerk and his assistants undertake the preparation of the indexes to the specifications and disclaimers filed in the Patent Office.

The third clerk, with assistants, examines and superintends the printing of the abridgments of the different classes of specifications prepared out of the office, and published by the commissioners.

The fourth clerk and his assistants have charge of the library.

Two others of the permanent clerks, and their assistants, manage the printing of the specifications and disclaimers filed in the office; and another, with his assistants, has charge of the warehouse for the sale of the copies of specifications and other publications of the commissioners.

The linguist conducts the foreign correspondence, and translates the descriptions of foreign inventions received from abroad.

In each department of this division of the office, however, there are, in addition to the duties which we have above in general terms alluded to, numerous other routine duties which we think it unnecessary to particularise.

To perform these various duties, there are in the office (in addition to the nine permanent clerks above named) five extra clerks, five writing clerks (paid by the stationer), and four warehousemen.

We have carefully examined into the business of this division of the office, and satisfied ourselves that the present staff of officers is not sufficient for the performance of the work to be done; the consequence of which is, that the printing of specifications, and the performance of several other duties in the office, have fallen greatly into arrear.

We think that at least six other clerks are requisite for the performance of the duties.

The permanent clerks in this division are paid by salaries in the same way as those in the other division. They also have urged their claims to increased remuneration. Very considerable skill is requisite for the performance of their duties; they are almost all of them persons who have exerted themselves greatly to advance the interests of the office, and we think that they have strong claims to the favourable consideration of the Commissioners and the Lords of the Treasury.

They have each of them furnished us with a written statement of claims, which we have deposited in the Patent Office for the information of the commissioners.

Nearly all the gentlemen employed as extra clerks have been in the office ever since 1852, and the information we have received satisfies us that they have performed their duties diligently and efficiently. We think that they have strong claims to be placed upon the permanent staff of the office, and we see no prospect of any smaller number of clerks than those at present employed being able to perform the duties of the office.

The writing clerks in this division are persons of the same description as those who are employed in the other division, and they have been paid in the manner which we have already described.

The profits put into the pocket of Mr. Ruscoe, the stationer, by the mode in which these writers have been paid, has every year amounted to a very considerable sum of money, and for the year 1864, we have been informed by the accountant of the office, the profit to the stationer amounted to nearly 700*l.*, for which he supplies nothing, and does nothing, except make the payments to the writers.

Several of these writers have been in the office ever

since it was established, and are very deserving persons, but being considered as stationer's men (although they really are not so), if any of them happens to be absent for a day or an hour on account of illness, or for a holiday, he receives no salary or wages for the day or hour during which he is absent.

We think that they ought to be treated as clerks employed by the office, and if they should continue to be paid weekly, the amount of imprest moneys advanced by the Treasury to the office could without difficulty be increased for that purpose. The writing clerks would then be paid their weekly wages by the cashier of the office, in the same way as the warehousemen and messengers are paid.

The insufficiency of the staff of officers to perform the duties of the office were greatly aggravated in the year 1859, by the late clerk of the patents arbitrarily discharging several clerks from the office, as we understand, without consulting the commissioners. The business was at that time somewhat in arrear, and the arrears have since gone on increasing to such an extent, that the usefulness of the office has been seriously diminished.

Much of the work, and consequently of the expenses, of this division of the office, are occasioned by the imperfections in specifications and specification drawings, and the copies of them, which the patentees are bound to furnish to the office, in pursuance of the statute and the rules of the commissioners.

Thus, the written descriptions contained in specifications are often inaccurately copied, and, therefore, the copies must be examined and corrected in the office before being sent to the printer. The copies of drawings are still more frequently inaccurate; some have been shewn to us full of gross blunders, and very much of the time of the draftsmen in the office is taken up by the necessity of correcting the copies of drawings before they can be sent to the printer.

It is very desirable, that the persons who thus occasion extra work to be done in the office should be made to bear the expense. The only remedy which seems to us to be available in the present state of the law is for the commissioners to make a regulation, that persons filing specifications shall pay the expense of correcting their inaccurate copies, and, upon leaving their specifications, shall deposit sums of money by way of security for the payment of the expenses.

The real remedy, however, is that which we have already mentioned, viz. to grant no patent to a petitioner until a proper specification of the invention has been deposited in the Patent Office, and printed.

We have paid great attention to the preparation of abstracts of specifications which was commenced in this division of the Patent Office by Mr. Woodcroft and Mr. Michell preparing abstracts of specifications relating to two classes of inventions, viz. Mr. Woodcroft of specifications relating to drain-tiles and pipes, and Mr. Michell of specifications relating to sewing and embroidering. Those abstracts were printed by order of the commissioners, and were found to be so useful, that gentlemen out of the office were employed to abstract specifications relating to other classes of inventions, and those abstracts have been found to be very useful, not only to the public, but also to many departments of the public service.

These abstracts are, indeed, the only efficient indices to the many thousands of specifications which are contained in the Patent Office.

The ordinary indices which were first prepared and published by the commissioners were, indeed, a very valuable assistance at the time they were given to the public. They were—first, the chronological index, containing the names of the patentees, with the titles, or the substance of the titles, of their inventions ar-

ranged in chronological order; secondly, the alphabetical index, containing the names of the patentees arranged alphabetically, with the dates of their patents, and the titles of their inventions; and, thirdly, the subject-matter index, in which the subjects to which inventions appeared by their titles to relate were grouped together under headings or descriptions placed alphabetically.

But it is well known that the titles of inventions in patents convey a very inadequate notion of the real nature of the inventions. Several inventions are frequently comprised in one patent, and the invention comprised in a patent frequently relates to several different and distinct subjects.

The subject-matter index was, therefore, found to give to any person making use of it a very small part of the information which he sought to obtain, and with such an index alone many days might be spent in searching the contents of the specifications themselves before the required information could be obtained.

The abstracts already prepared have supplied the want thus felt with respect to the subjects to which they relate, and it seems to us very desirable that a complete series of abstracts should be prepared and published without any unnecessary delay.

In order to effect this object, it will, we think, be necessary to continue to employ persons out of the office, until all the existing specifications shall have been abstracted.

But we think that the staff of the office should be sufficient to effect the abstracting of all future specifications, as they come into the office; and if the abstract of every specification were to be thus prepared, and duly entered in an index book, the books of the office would at all times give an inquirer the greatest practical amount of information as to the novelty, or want of novelty, of any particular invention which might be the object of his search.

Library.

The library was instituted by the commissioners in the month of March, 1855, and it has proved to be of the greatest service to the public, and indeed the specification division of the Patent Office without a library would be imperfect, and incapable of accomplishing the objects for which it was formed.

The public are bound at their peril to take notice of patents for inventions, and they ought, therefore, to have the means of ascertaining with facility what the specification of a patent describes and claims, as soon as practicable after the filing of the specification.

To search for the required information amongst the books and records of the office would be inconvenient, if not impracticable, and would interfere with the business of the office. But with a library containing books and indices, with proper entries made in them, so at all times to shew accurately the whole of the information in possession of the office respecting patented inventions, a person making a search in the library with respect to any subject may with facility obtain the information which he requires.

The memorial of the 22nd April, 1864 (referred to us by the commissioners), relates almost exclusively to the library, and complains of the want of books and assistants in the library, and the inconveniences occasioned to the public by the arbitrary and unnecessary regulations introduced by the late clerk of the patents, as well as of the crowded state of the books, by reason of the smallness of the space in the building which can be devoted to the library.

The memorialists are a large number of the most eminent engineers and scientific men of the day. One of them waited upon us at one of our sittings, and

stated to us the alterations which they desired to be made in the library.

In order to prevent the preparation of this Report from being delayed, we requested that the memorialists, or some of their number, would state to us in writing what they desired to be done. That they have done; and we have deposited their statement in the Patent Office, for the information of the commissioners.

With respect to the contents of this statement, we only need say, that the adoption of recommendations, as to the library similar to those contained in this report, is strongly urged by the memorialists.

(To be continued).

BOOKS RECEIVED.

An Examination of the Question of the Liability of Shipowner for Loss or Damage of Goods from Faults in Navigation; with Appendix containing Reports of Cases, and References to authorities. By John War-rack, Chairman of the Leith Chamber of Commerce. 8vo., pp. 41.—A. & C. Black.

Statement adopted by the Graduates of the Queen's University in Ireland, assembled in Public Meeting in Belfast, on Wednesday, the 6th of December, 1865. 8vo., pp. 31.

Britton.—The French text carefully revised, with an English Translation, Introduction, and Notes. By Francis Morgan Nichols, M.A., of Lincoln's-inn, Barrister-at-Law, formerly Fellow of Wadham College. 2 vols. 8vo.—Oxford Clarendon Press.

A Succinct Treatise on the Copyhold Acts, the Practical Working and Effect thereof, and the Mode of Procedure under the same for effecting Enfanchisement. By James Cuddon, Esq., of the Middle Temple, Barrister-at-Law. 8vo., pp. 299.—Stevens & Sons.

Court Papers.

EQUITY CAUSE LISTS, AFTER HILARY TERM, 1866.

*. * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—A. Abated—Adj. Adjourned—A. T. After Term—Ap. Appeal—C. D. Cause Day—Cl. Claim—C. Costs—D. Demurrer—E. Exceptions—F. C. Further Consideration—F. D. Further Directions—M. Motion—M. D. Motion for Decree—P. C. Pro Confesso—Pl. Plea—Ptn. Petition—R. Rehearing—Sp. C. Special Case—S. O. Stand Over—Sh. Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Davies v. Shepherd (W., June 3) Full court, Feb. 10
M'Intosh v. Great Western Railway Co. (S., July 24) L. C. Part heard
M'Intosh v. Great Western Railway Co. (S., Nov. 20) L. C.
Williams v. Williams (K., July 27) L. J., Feb. 20
Horsfield v. Ashton (W., Nov. 1) Full court, Feb. 10
Soady v. Turnbull (S., Nov. 2) L. C.
Wilson v. Hart (W., Nov. 6)
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In re Mellor's Es-tate } (R., Nov. 16) Ap.
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Humphrey v. Roberts (S., Nov. 23) L. C.
Martin v. London, Chatham, and Dover Railway Co. (S., Dec. 4) L. C.
Spirett v. Willows (S., Dec. 8) L. C.
Bateman v. Boynton (R., Dec. 12)

Payne v. Parker (W., Dec. 9)
Dabbe v. Nugent (S., Dec. 18) L. C.
Burke v. Rogerson (R., Jan. 12) Part heard
Hayward v. Kersey (S., Jan. 12) L. C.
Hardwick v. Wright (R., Jan. 12)
Att.-Gen. v. Master, Fellows, and Scholars of Sydney Sussex College, Cambridge (R., Jan. 17) L. C.
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Harries v. Rees (S., Jan. 18) L. C.
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Baxendale v. West Midland Railway Co. (M D) L. C.
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Croker v. Kreeft } (F C)
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Before the Right Hon. the MASTER OF THE ROLLS.

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In re Simmonds's Es-tate } (F C, from Morgan v. Middlemiss } ch.)
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Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

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Before the Vice-Chancellor Sir JOHN STUART.

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Before the Vice-Chancellor Sir W. P. WOOD.

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THE JURIST.

LONDON, FEBRUARY 17, 1866.

THE question whether companies engaged in the execution of works under the powers of an act of Parliament are liable to make compensation to individual owners of property for special damage accruing from obstructed access to their premises, where they carry on particular trades and business, occasioned by temporary buildings in streets and thoroughfares in the execution of such works, has incidentally come again before the Court of Common Pleas in the case of *Herring v. The Metropolitan Board of Works* (19 C. B., N. S., 810). That case arose under the Metropolitan Local Management Act, which provides for compensation for damage done in execution of the works under the powers of that act in very general terms, and also incorporates the 121st section of the Lands Clauses Consolidation Act. Our readers are well aware that, in dealing with the Railway Clauses Act and the Lands Clauses Act, the Courts of Queen's Bench, Common Pleas, and Exchequer, though great difference of opinion prevailed as to whether there was any right to compensation in the class of cases adverted to, all concurred in the view that the words "or injuriously affected," as contradistinguished from land actually taken, were to be interpreted as meaning those cases only where the particular injury was such, that an action could have been maintained by the owner of the premises, had there been no statute authorising the works to be done. And thus in such cases it became the universally adopted test. Could any and what action at common law have been maintained for the injury complained of?

It is necessary thus to notice the ground on which the cases have hitherto proceeded, in order to appreciate the method of dealing with the question that seems now likely to be pursued. The recent decision of *Herring v. The Metropolitan Board of Works* seems to say, "Good bye" to the rule, that the interpretation of these statutes is identical with the question, whether or no an action could have been maintained at common law for the injury complained of; and rather to put it as a question, whether or no, looking at the scope and object of the act, and the language used in it, the damage sustained is intended to be compensated for, or is a grievance to be endured by private persons without redress, in consideration of the benefit gained by the public from it. It is some years since it was held by the House of Lords, in *The Caledonian Railway Company v. Ogilvie* (2 Macq. 229), that damages were not recoverable for the stoppage, and other mere inconveniences incident to the crossing a public road by a railway on the level, under the sanction of an act of Parliament. There, Lord Cranworth says, "The construction put on the expression 'injuriously affected' in the act of Parliament, which gives compensation for injuriously affecting lands, certainly does not entitle the owner of lands, which he alleges to have been injuriously affected, to any compensation in respect of any injury, which, if done by the railway

company without the authority of Parliament, would not have entitled him to bring an action against them. I am far from admitting that he would have a right of compensation in some cases, in which, if the act of Parliament had not passed, there might have been not only an indictment, but a right of action." And he further said, "I apprehend it to be clear, that in these acts of Parliament the Legislature meant to authorise these public companies, for the convenience and advantage of the public, to do acts with regard to which they were not only relieved in respect of what they were doing from indictment at the instance of the Crown, but they are also entitled to do them, without being liable to redress at the suit of individuals. And Lord St. Leonards, in giving his opinion, concurred in that view.

In *Herring v. The Metropolitan Board of Works*, the claim was for compensation in respect of damage done to the appellant by a hoarding put up, and kept up, from August, 1864, to January, 1865, for the reconstruction of a sewer by the board of works, which rendered the access to the premises of the appellant, a livery-stable keeper, less convenient than it had been before. Two or three men were sometimes required to assist in getting a carriage into the yard in consequence of the obstruction, and the earnings of the business during the period of such obstruction were 10s. a week less than in the corresponding period of 1863. Several customers also were called to speak to the inconvenience occasioned to them by the obstruction, one of whom had ceased to use the appellant's stables in consequence of it. No part of the premises had been taken for the hoarding, nor did it appear that the hoarding was kept up beyond a reasonable time for the purpose of reconstructing the sewer. The claim, not exceeding 50*l.*, had been made before a magistrate under the Metropolitan Local Management Act, 18 & 19 Vict. c. 120, ss. 135 and 225, and the 121st section of the Lands Clauses Consolidation Act, incorporated in the former act, and the magistrate decided against the claim for compensation, and his decision was affirmed on appeal by the Court of Common Pleas. On referring to the opinions of the learned judges, it will be found that in substance they amount to this—that the grievance complained of was authorised by the statute, while the statute gave no right to compensation for it; that it was damage lawfully inflicted, or, as Mr. Justice Willes put it, "damnum sine injuriâ." Mr. Justice Byles concurred, and said that, though one of the judges who dissented from the conclusion arrived at by the Exchequer Chamber in *Ricket v. The Metropolitan Railway Company* (11 Jur., N. S., part 1, p. 260), he should be the first to bow to the authority of that decision. He, however, distinguished that case from the matter in hand, and rested his judgment on the ground that the injury complained of, viz. the temporary obstruction of the public way, rendering the access to the appellant's premises more inconvenient for a short time, gave him no cause of action, and no right to claim compensation. That, as a general rule, all the Queen's subjects had a right to the free and uninterrupted use of a public way; but ne-

vertheless, all persons had an equally undoubted right, for a proper purpose, to impede and obstruct the convenient access of the public through and along the same. That instances of this interruption arose at every moment of the day. Carts and waggons stopped at the doors of shops and warehouses, for the purpose of loading and unloading goods. Coal shoots were opened on the public footways, for the purpose of letting in the necessary supplies of fuel; so for the purpose of building, rebuilding, or repairing houses abutting on the public way in populous places, hoardings were frequently erected, inclosing a part of the way. Houses must be built and repaired, and hoarding was necessary in such cases to shield persons passing from danger from falling substances. That if that was the right of private individuals, *a fortiori* must it be the right of a public body to which exclusive power is intrusted for the general good of all. Mr. Justice Montague Smith also concurred, and said, that the Legislature was dealing with a public body, engaged in public works for the public good, and therefore was not likely to fetter them in such a manner as to obstruct their general usefulness; and although the words of the 135th section were large, he did not think that they extended to a case of consequential damage like that complained of. And after some observations explanatory of that view, and pointing out that the collocation of the words in the 135th clause tended to shew that the word "damage" must be confined to something like actual damage to property, in conclusion, added, "The great inconvenience which would result from the numerous claims of this sort, which would be constantly arising, affords a strong argument against the probability of the Legislature having intended this to be a subject of compensation. And reading the whole clause together, I am clearly of opinion that the case is not within the words, and consequently that the magistrate's decision was right."

That decision, it is to be observed, related to the Metropolitan Board of Works, in the execution of sewerage works—a public body engaged in sanitary works of great public utility. But its principle is capable of being applied to railway companies, according to the view that the presiding judges may take of their public utility, of their being public bodies engaged in public works for the public good, and may be used to limit the words "injuriously affected," in the Lands Clauses and Railway Acts, in the same manner as it has been used to limit the word "damage" in the Metropolis Local Management Act, and thus be made the turning point of the question, which has now travelled through all the courts in Westminster Hall, and awaits the final decision of the House of Lords, viz. whether a right to compensation has been given under the Lands Clauses Acts and Railway Clauses Acts, for injuries done by railway companies to the trade and business of individuals in particular tenements, by temporary buildings and obstructions in streets and thoroughfares, materially obstructing the access to other premises.

In our former observations on this subject (11 Jur., N. S., part 2, p. 139), we took it as a settled rule of inter-

pretation, that the right of action at common law was the test of the right to compensation under the statutes, since, by such a rule the Legislature is considered as neither taking away existing rights, nor conferring new ones; and we endeavoured to shew that an action could have been maintained at common law for special damage to the beneficial occupation and value of premises occasioned by what at common law, and without the aid of the statute, would have been a purely illegal act on the part of the railway company. If the adopted test is changed, the matter then stands simply, without reference to the common law, is it or is it not within the meaning of the statutes that such an injury should be compensated for? Is the impeding and obstructing the access to a man's premises by means of buildings and works, continued for a length of time, and resulting in serious loss and injury to the business he there carries on, an injury within the meaning of the compensation clauses to be compensated for? Some may think it is for the interest of the public that for such an injury so inflicted there should be no redress. But is it so absurd and so repugnant to the manifest intention of the Legislature, that although the ordinary meaning of the words used in the act would give such redress, yet it is not given, on the ground that the general policy and object of the statute shews that it meant it should not be given, and that such loss or damage should be endured by individuals for the public good, without any power to prevent it, and without any redress for it when done. But the principle of legislation from the earliest of these statutes to the present time has always been, while it sanctioned the invasion of the rights and interests of property, at the same time to provide that there should be compensation given for any tangible injury to property sustained by its owners. Here we take the case of material obstruction to the access to premises, and material injury to the business carried on there. These railways are matters of private speculation and enterprise, and they who reap the profits ought to bear the cost, and, as far even as the public are concerned, it is very doubtful whether it is not on the whole most salutary, that too free license should not be given to schemes of this kind, and that there should always be at least this equitable restraint upon them, that what they take, they must pay for. What is there absurd or repugnant, with regard to the multitude of schemes now on foot to carry railways in and about large towns, for the Legislature to sanction these schemes, or the most feasible of them, but at the same time to take care that just compensation should be given, and, in effect, to say to the promoters, "You may have your scheme, but we do not consider it of such overwhelming State necessity that you should have it without the obligations that, in fairness to individual owners of property, ought to be inseparable from it?"

REPORT TO THE LORD CHANCELLOR, AND TO THE COMMISSIONERS OF PATENTS FOR INVENTIONS.

(Concluded from p. 58).

Museum.

The Patent Office Museum was formed by the Commissioners of Patents about the end of the year 1856, when the Lords of the Treasury, at the request of the commissioners, sanctioned the necessary expenditure for forming and working the museum.

The machines, models, and other objects contained in the museum belong partly to the commissioners and partly to Mr. Woodcroft and various private persons.

Upon the formation of the museum, Mr. Bennett Woodcroft was appointed the superintendent of it, but without addition being made to the salary which he receives as superintendent of the specification division of the office.

We conceive the proper objects of the museum to be, to assist persons visiting the Patent Office in obtaining the information they require respecting the mechanical inventions which have been made the subject of letters-patent, and to illustrate the progress of mechanical arts.

The difficulty of conveying clear notions respecting the construction of complex machines by means of verbal descriptions only is well known, and, even with the aid of drawings, it is frequently impracticable for any but persons of great skill, and accustomed to mechanical drawings, to comprehend clearly the essential principles upon which an improvement in such a machine depends.

It is common for a person engaged in any particular branch of manufacture, making or employing machinery, to have recourse to the Patent Office, not merely to see what improvements have been invented in the machinery which he makes or uses, but also to ascertain whether any improvements have been made in machinery used for analogous purposes, which he may be able to adopt for the purposes of his own business.

In cases such as those we have adverted to, models and specimens of machines are of great use; they enable a mechanic to understand with facility the construction of machines; they instruct manufacturers, by shewing the means which others have devised to overcome difficulties, or to obtain important results.

It appears to us that a well kept museum is an important adjunct, if not a necessary branch, of the specification division of the Patent Office, and the existence of the present museum, in connexion with the office, has been sufficient to induce many persons to present to it machines and models of great value to the public.

The collection of objects in the museum has hitherto been exhibited at South Kensington; but it is understood that the building is required by Government for other purposes, and that the museum must be removed to some other place.

The officers employed in the museum under the superintendent are, a curator, a secretary, two assistants, a mechanic, and a messenger. This moderate staff has been sufficient for the museum in its infancy; but if it be removed to a suitable locality, we are convinced that the specimens and objects in it will rapidly accumulate in number, and that it will be found to afford increased assistance to persons engaged in mechanical arts.

The expediency, if not necessity, for the extension of the museum has been strongly pressed upon us by the numerous scientific gentlemen who appended their names to the memorial mentioned in our instructions, and we have reason to believe that many other eminent persons, both in the metropolis and in the country, entertain similar opinions.

General Observations.

A great variety of claims have been brought before us by several officers, founded on augmented duties, insufficient salaries, slow promotion, &c. These are precisely the matters which we think that a principal officer, such as we have described above, could most effectually deal with, under the direction of the commissioners.

Many of these claims for redress or increased pay were sent to Mr. Edmunds, but remained without

answer at the time he resigned his office. He probably had not acquainted himself sufficiently with the details of the labours of the clerks to enable him to form any proper judgment. Still less could the commissioners, without leisure to investigate them, form any judgment upon such matters, as they occurred from time to time.

We have listened with the utmost patience and at great length to all the complaints of this description which the officers have brought before us, although it appears to us that they were hardly within the scope of the inquiry intrusted to us.

And we feel that any opinions which we could form on the subject, based merely on the representations made to us, would be of little or no value, in comparison with the judgment of a high officer in daily contact with his subordinates, watching their labours, and from his own observations knowing the amount of toil cast upon them, and the mode in which they perform their duties.

For these reasons we have forborne to enter into the individual claims of the various officers, but we have deposited in the Patent Office all the communications which they have made to us in writing.

The Patent Office in every department of it requires greatly enlarged space for the business which is carried on.

Numerous suggestions have been made from time to time respecting sites proper for erecting buildings for the office; but, notwithstanding the urgent need for additional accommodation, nothing has been done, and the duties of the office have to be carried on in very limited offices in Southampton-buildings, very much to the hindrance of business and inconvenience to the public.

We think that the museum ought to be in the same building as the Patent Office, or in some place near to it, but no accommodation can be obtained for the museum in any existing building near to the present Patent Office.

According to the Patent-law Amendment Act, as subsequently amended, there are stamp duties paid upon patents for revenue purposes which now every year greatly exceed the annual amount of duties paid into the Exchequer before the passing of the act above mentioned.

Fees were also by the act required to be paid for the purpose of raising a fund to pay the expenses of the Patent Office, and carrying the provisions of the new law into effect.

These fees (now paid in the shape of stamp duties) annually amount to a much larger sum than has ever been expended for the expenses of the office.

These fees were not made payable for the purpose of raising a public revenue, and we think that not any of them ought to be allowed to form part of the general revenue of the country, until the accommodation, expenses, and due working of every department of the Patent Office have been amply and liberally provided for.

(Signed) JOHN GREENWOOD.
W. M. HINDMARCH.

LORD ST. LEONARDS' AUCTIONS BILL.

THIS bill is intended to make the rule of law, with respect to the employment of a puffer, agree with that of equity, and to provide for written evidence of the reservation of a minimum price. These objects, if unobjectionable, are of the very smallest importance. The difference between the rules of law and equity as to the effect of what is technically called "puffing," is undoubtedly an anomaly; but opportunities for the

application of either rule are of the rarest occurrence, and the law recognised on both sides of Westminster Hall, that the employment of even a single puffer at a sale stated to be without reserve vitiates the sale, is amply sufficient for the protection of third persons. The 6th section of the bill, being merely declaratory of an unquestioned rule, is superfluous, and therefore objectionable.

The effect of the 7th and 8th sections appears to be, that if the sale is stated to be subject to a reserved price, and the amount of such reserved price is stated in writing under the hand of the owner or his agent, and delivered to the auctioneer before the sale, the auctioneer is not bound to accept the highest bidding below the reserved price. But if the sale is not stated to be without reserve, the vendor *must* employ a puffer, in order to reserve a minimum price. We can see no reason for the distinction. If it is not inexpedient to allow a vendor, without giving notice of his intention, to reserve a price by means of a secret puffer, it cannot be wrong to allow him to do the same thing by means of written instructions to the auctioneer. As the 7th section stands, any verbal statement by the auctioneer at any time before the sale, that a price is reserved, will be sufficient.

But the policy of any special restriction on the vendor's liberty of action is very questionable. If an intending purchaser knows so little of the value of the property he is looking after, or of his own mind, as to be guided by the biddings of those around him, there is no reason why he should not be left to such guidance. He goes with the intention of giving as little as possible, and the vendor's desire is to get as much as possible, and where there is a thin attendance of bidders, or the subject of sale is something not generally in request, the vendor is greatly too much at the mercy of what are called *bonâ fide* bidders. If he states that the sale is without reserve, it is a proper tribute to candour to hold him to his statement; but that the law already does, and we think nothing more is wanted.

The provisions of the 4th section, that the auctioneer before he takes a first bidding shall read the conditions of sale, is both unnecessary and incomplete, and in many cases would inflict great hardship upon the auctioneer. The conditions of a sale of land are often very long, and absolutely unintelligible to laymen. They are almost always unintelligible even to lawyers, with out reference to the particulars of sale; and it most commonly happens that the really important conditions appear in that part of the printed notice of sale which is called the "particulars." Must the auctioneer pick out these straggling conditions and read them also, or must he read particulars and all? If the latter, he must begin in many cases an hour at least before the time for bidding; and he must secure an audience, for he is to read "to the persons assembled." With what degree of loudness and distinctness must he read? and will any little inaccuracy in reading vitiate the sale? But, indeed, the bill does not seem to visit an infraction of this regulation with any penalty. At present it is more usual to consider the conditions as read, and the only effect of a different practice would be, that bidders would allow time for the reading, and drop in when it might be expected to be over. A sale in many lots may occupy several hours, and an intending bidder does not make his appearance until the expected time for putting up the lot he desires is near at hand.

The 5th section, which prohibits the auctioneer from bidding for any person, but leaves it open to his clerk or porter to do so, seems to be a very trifling and useless regulation.

The objection to all such regulations is, that they

cannot be enforced. A vendor who wishes to employ puffers, or to reserve a price, can do so if he thinks fit without fear of detection. An auctioneer who wishes to set the whole string of enactments at defiance has only to advertise that, in order to prevent accidents, every sale at his rooms will be stated to be subject to a reserved bidding, whether a bidding be reserved or not, and there will be an end of the protection of *bonâ fide* bidders. Honesty and fair dealing are sufficiently secured by the general rule of common law and equity, that a vendor who has acted fraudulently cannot enforce the contract; and the Legislature might be better employed than in trying to protect the pockets of bidders who will not read the conditions of sale, or ascertain the value of what they bid for.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, Feb. 8.

THE LAW RELATING TO BIDDINGS AT SALES BY AUCTION.

Lord *St. Leonards*, in rising to draw their Lordships' attention to the law relating to biddings at sales by auction, said, that, in point of fact, scarcely an auction was held in this country without some one being employed to bid on the part of the owner. On this subject, however, and on this subject alone, he believed law and equity to be at variance. The courts of common law held, that every sale was actually void if any person was employed to bid upon the part of the owner. The courts of equity, on the other hand, for the protection of the owner, permitted him to appoint a person called a "puffer" to bid on his behalf, up to a certain price, provided that such price did not exceed the real value of the property. He, therefore, begged to introduce a bill to amend the law. By the provisions of that bill an auctioneer was forbidden to bid at the sale of any property, either on account of himself, the owner of the property, or any other persons, but the owner of the estate was permitted to engage a "puffer," who might bid up to a certain price, provided that such price was communicated to him and to the auctioneer, in writing, before the commencement of the sale. Those provisions would enable a man to insure that his property should not be sold at a price far below its real value, and yet would prevent the public from being induced to give more than the estate was worth, by fictitious bidding on the part of either the auctioneer or the "puffer." He was aware that Lord Loughborough, when Lord Chancellor, had spoken with something like disrespect of those who thought that the biddings of one man influenced those of others, but he, on the contrary, believed that all men were influenced more or less at auctions by the biddings of those around him. In the first place, the biddings at an auction gave some indication of the real value of the property; and, in the second place, a little bit of vanity induced a man to shew that he possessed the longest purse. He, therefore, thought it absolutely necessary that the public should be protected from being taken in by fictitious biddings. In sales under the Court of Chancery, where a bidding was reserved, the sum below which the estate was not to be sold was stated in a sealed paper, which was placed in the hands of the auctioneer, who was not allowed to open it till the sale was commenced. If the bids stopped short of the price stated in that paper, he announced to the persons assembled that no sale had taken place; and this bill provided, that where there was a reserved bidding, as in sales under the Court of Chancery, the sum below which the estate was not to be sold should be stated in writing, and delivered to the auctioneer, so that there should be no misunderstanding; and where the biddings were real, but did not come up to the sum fixed, he was to announce that no sale had taken place; but he would then be at liberty to receive any bidding equal to or beyond the sum fixed as the value. An auctioneer acting contrary to the directions of this bill would be liable to an action for the damage which any real bidder might sustain. There was another provision in the bill of a different nature. It was not one man in a hundred who knew the extremely important conditions under which auctions took place, and the expense incurred in making up the title was often very

onerous. When he came into the hands of his own solicitor, the buyer generally found he had some 200l. to pay for making out the title. That expense ought to fall on the seller. The noble and learned Lord concluded by laying the bill on the table.

The Lord Chancellor said, that the subject to which the noble and learned Lord had called attention was one of considerable importance, and he thought their Lordships were indebted to the noble and learned Lord for the care he had bestowed on it. His noble friend would not, he hoped, think that he was treating the proposed enactment with disrespect if he declined at present to enter into a discussion upon it; for it was precisely one of those measures with respect to which, until one saw the bill and entered into its consideration, clause by clause, it was impossible to say more than that its general object seemed advisable.

The bill was read a first time.

Monday, Feb. 12.

RAILWAY COMPANIES' BORROWING POWERS.

The Earl of *Belmore*, in rising to ask a question of the Government with reference to the borrowing powers of railway companies, drew their Lordships' attention to what had taken place during the last and preceding sessions of Parliament with reference to that important subject. In the session of 1863 their Lordships appointed a select committee to inquire into the whole question of companies' borrowing powers, with a view to see if they could be restricted within proper limits. The committee sat through two sessions of Parliament, and made two separate reports, recommending, among other things, that it would be advisable to require railway companies to make returns of their obligations to a properly appointed officer, whose duty it would be to carefully register them. A bill was passed by their Lordships, but it was fiercely opposed by what was called the railway interests in the House of Commons, and ultimately lost. The objections to that bill were very fairly stated by a newspaper devoted to financial interests. They were four in number, and the first urged that a system of public registration would give to debentures a currency which they did not intrinsically possess. The registrar whom the bill proposed to intrust with the duty of receiving the annual returns could not possibly ascertain whether any bonds that were submitted to him were within the limits of the powers of the railway company presenting them; and, therefore, the bonds would acquire a fictitious value by registration. The bill, however, did not propose to do more than what has been done in Ireland for some time. There the thing registered simply took priority according to the date of its registration; and the bill introduced simply proposed to give priority on the same ground. A false deed registered in Ireland did not by the process of registration become good. The only object of the bill was to shew the numbers and amount of the securities issued by a company. The second objection was, that the bill would take from directors the responsibility which they were now supposed to possess; but the same objection might be urged against every bill restricting the powers of railway companies. The third was, that the bill would interfere with the proper conduct of business. He was of opinion that the increased security the public would have gained if the proposed bill had become law would more than have compensated them for any minor inconvenience they would suffer. The fourth objection was, that these debentures would take undue priority over other debts. Evidence had been given upon this subject, and their Lordships were satisfied that the priority given to these bonds was not undue. He asked whether it was the intention of the President of the Board of Trade to introduce any measure to give effect to the recommendations of the select committee of their Lordships' House in 1864 on railway companies' borrowing powers; and whether, if such a measure should be introduced, it would be framed so as to meet the case of the obligations of joint-stock companies generally.

Earl *Russell* said that the subject was still under the consideration of the Government, but it was not proposed to introduce a measure at present.

Lord *Overston* said he regretted to hear the answer which had been given by the noble Earl at the head of the Government. By the Legislature of the country, power was given to railway companies, under certain restrictions, to borrow

large sums of money upon their bonds. The investors in those bonds were, however, unable to ascertain whether those restrictions had been attended to, and whether the security offered was not utterly worthless. That was not a theoretical objection. It was an objection which had actually occurred on several striking occasions. Even since the question was last under the consideration of their Lordships, an important case had arisen. A great company had gone far beyond its powers, and the directors defended the act under the plea of necessity. They had to meet a large amount of bonds, and they thought it advisable for the interests of the company to raise money beforehand upon the easy state of the money market, and thus to be prepared to meet their engagements. Fresh bonds were accordingly issued beyond their legal powers, and upon that the serious question might arise, whether the security had not thus been invalidated. Under these circumstances, it was reasonable that the public should look to the Legislature to afford them the opportunity of exercising that precaution which the Legislature itself had made necessary to ascertain the validity of those securities. A parliamentary committee upon the subject had examined persons representing the largest railways in the kingdom. They made no objection to such a change as that suggested by the noble Lord opposite, but, on the contrary, expressed themselves ready to welcome it. The solicitor to the Bank of England, which is supposed to be a large investor in those securities, expressed a similar opinion. The President of the Council was the only member of the committee who dissented from the proposal. He hoped that the attention of the President of the Board of Trade would now be directed to the matter, and that he would be prepared to grapple with the few difficulties which beset the subject. He certainly was sorry that an answer more business-like and more satisfactory had not been returned by the noble Earl.

The Marquis of *Lansdowne* felt persuaded that such a measure as that referred to by the noble Lord would not be injurious to any company whose business was conducted upon proper principles.

Tuesday, Feb. 13.

SALE OF LAND AUCTIONS BILL.

Lord *St. Leonards* moved the second reading of this bill.

The Lord Chancellor said he thought this was likely to be a very useful measure, although some of its details might require consideration and possibly alteration in committee. He thought, however, that sales under the authority of the Court of Chancery should not be exempted from the operation of the bill, as his noble friend proposed.

Lord *Chelmsford* entirely approved of the bill, which, with some amendments, he should be glad to see become law. He agreed with the Lord Chancellor in thinking that the bill should apply to sales under the Court of Chancery.

Lord *Kingsdown*, who was nearly inaudible in the gallery, was also understood to express his approval of the bill.

Lord *St. Leonards* contended that there was no necessity to render the provisions of the bill applicable to sales under the Court of Chancery, because such sales were sufficiently regulated by the practice of that court and by its rules, which completely met the evils for which he was now seeking to provide a remedy.

The bill was then read a second time.

HOUSE OF COMMONS.—*Tuesday, Feb. 13.*

THE ART UNION LAWS.

Lord *R. Montagu* gave notice that on the 18th March he should move for a select committee to inquire into the operation of the Art Union laws.

THE BANK CHARTER ACT OF 1844.

Mr. *Samuelson* asked the Chancellor of the Exchequer whether he intended, during the present session, to introduce an amendment of the Bank Charter Act of 1844, enabling the Bank of England to increase its issues against securities, beyond the amount to which they are at present limited by that act.

The Chancellor of the Exchequer said that, looking at the prospect of public business, he was very doubtful, or more than doubtful, whether it would be in the power of the Government to make any proposal with regard to the difficult sub-

ject of the issue of bank notes during the present session. But with regard to the particular question of the hon. member, if it implied whether the Government intended to enable the Bank of England to resume the discretionary system which existed before the act of 1844, he was bound not to limit his answer to the present question, but to say that the Government would not be disposed, either during the present or any future session, to introduce such a measure.

THE HON. R. BETHELL.

Mr. *Hovess* asked the Attorney-General whether any steps had been taken to prosecute the Rev. George Rogers Harding, Patrick Robert Welch, Esq., and the Hon. Richard Bethell, or any of them, for corrupt practices in obtaining, or attempting to obtain, a judicial appointment, as suggested by the report of the select committee on the Leeds Bankruptcy Court.

The Attorney-General stated, that in accordance with the recommendations of the select committee, Government had taken steps for criminal informations against Mr. Welch and Mr. Bethell. Those informations now stood in the list for trial at the present sittings, and so far as the Government were concerned, they were ready to proceed to trial. With regard to Mr. Harding, he was an important witness against the other two, and, therefore, it was impossible to proceed against him.

JURIES IN CRIMINAL CASES.

Sir C. O'Loughlen obtained leave to introduce a bill to codify and amend the law in relation to keeping together and discharge of juries on the trial of criminal cases.

BILL IN PROGRESS.

A Bill, intituled "An Act for amending the Law of Auctions of Estates."

[Presented by Lord St. Leonards.]

Sect. 1. This act may be cited for all purposes as the "Sale of Land by Auction Act, 1866."

2. This act shall commence and take effect on the 1st August, 1866.

3. "Auctioneer" shall mean any person selling by public auction any land, whether in lots or otherwise:

"Puffer" shall mean any person employed by the seller to bid at any sale by auction of any land:

"Land" shall mean any interest in any messuages, lands, tenements, or hereditaments, of whatever tenure.

4. Every auctioneer shall, previously to taking any bidding at any sale by auction of land, read to the persons assembled the conditions of sale.

5. No auctioneer shall, at any sale by auction of land, make any bid for or on behalf of himself, or for or on behalf of the seller, or for or on behalf of any purchaser, or for or on behalf of any other person.

6. If, in the particulars or conditions of sale by auction of any land, it is stated that such land will be sold without reserve, or to that effect, or if, at or previous to such sale, the auctioneer declares the same, then it shall not be lawful for the seller to employ any puffer at such sale, or for the auctioneer to take knowingly any bid from any puffer.

7. Where any sale by auction of land is declared, either in the particulars or conditions of such sale, or by the auctioneer at or previous to such sale, to be subject to a reserved price, then, if no bid is made equal to, or higher than, such reserved price, the auctioneer shall declare that such land is not sold, but has been bought in on account of the owner; but in all such cases the amount of such reserved price shall be stated in writing, signed by the seller or his agent, and delivered to the auctioneer previous to such sale: provided always, that it shall be lawful for such auctioneer to accept any bid at any such sale made after such declaration shall have been made, being equal to, or higher than, such reserved price.

8. If, at any sale by auction of land, no declaration is made that such sale will be without reserve, or words to that effect, it shall be lawful for the seller to appoint or nominate as a puffer any one person other than the auctioneer, but not more than one, to bid on his behalf at such sale: provided, that the sum beyond which such puffer shall not bid be stated

in writing, signed by such seller or his agent, and which signed writing shall be delivered to such puffer previous to such sale, and notice in writing of such appointment, and of the sum fixed as aforesaid, shall be delivered to the auctioneer previous to such sale: provided always, that it shall not be lawful for any such puffer to bid on his own bidding, or beyond the sum stated in such signed writing as aforesaid.

9. If, at any sale by auction of lands, any bid is made by any auctioneer or puffer, or more than one puffer shall be employed at such sale, in contravention of the rules of this act, such sale shall be void against any bona fide bidder to whom such land may be knocked down, and who shall be unwilling to complete such purchase.

10. If, at any sale by auction of land, such land is knocked down to the bid of any person bidding in contravention of the rules of this act, the person making the last bona fide bid at such sale may elect to become the purchaser of such land at the price of such last bona fide bid, provided such bidder deliver, within twelve days from the day of sale inclusive, notice in writing of such his intention to the auctioneer of such sale, or leave the same at his place of business, and do, at the same time, pay or tender to such auctioneer, or the person acting for him there, the amount of deposit required by the particulars or conditions of sale.

11. Any auctioneer who knowingly acts in contravention of the rules of this act shall be liable to any bona fide bidder in an action for damages occasioned by loss of time, travelling expenses, and advising with counsel or solicitors on the conditions of sale.

12. Nothing in this act contained shall affect any sale of land made under or by virtue of any order of the High Court of Chancery in England, of the High Court of Chancery in Ireland, or of the Landed Estates Court there, or of the Court of Chancery in the County Palatine of Lancaster, or of any county or other court having jurisdiction in equity.

13. This act shall not extend to Scotland.

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N O T I C E.

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THE JURIST.

LONDON, FEBRUARY 24, 1866.

THE Succession Duty Act has given rise to many questions and much litigation, and is still almost as great a puzzle and a snare as it was felt to be while it was still a novelty. It has long been settled, that the liability of personal property administered in this country to legacy duty depends upon the domicile of the deceased owner. If, at the time of his death, he was domiciled in a foreign country, or in a British dependency, in which the acts imposing legacy duty have no force, no legacy duty is payable in respect of any part of his personal property, although it be situated and administered in this country, for the benefit of legatees or next of kin domiciled here: (*Thomson v. The Advocate-General*, 12 Cl. & Fin. 1; *The Commissioners of Charitable Donations v. Devereux*, 13 Sim. 14); and as a person who has power to dispose of property as he thinks fit is, for all purposes connected with the disposition of property, in the same position as an absolute owner, testamentary gifts made under such a power, though expressly charged with legacy duty (36 Geo. 3, c. 52, s. 7), where the appointor died domiciled in the United Kingdom, are exempt, if the testator had a foreign domicile at the time of his death. (*Re Wallop's Trust*, 10 Jur., N. S., part 1, p. 328; 1 De G., J., & S. 656). The Succession Duty Act was intended to impose a duty similar to the legacy duty on such successions to personal property because of death as, by reason of being derived under instruments not testamentary, or otherwise, were not charged with legacy duty. It contains no express provision respecting appointments, except one, which, though it has no direct bearing on the question we are about to consider, is important, as involving a legislative declaration, that for the purpose of taxation for succession duty, the devise of a general power of appointment over property is, if he makes use of the power, to be regarded as the donee of the property itself:—"Where any person shall have a general power of appointment, under any disposition of property, taking effect upon the death of any person dying after the time appointed for the commencement of this act, over property, he shall, in the event of his making any appointment thereunder, be deemed to be entitled, at the time of his exercising such power, to the property or interest thereby appointed, as a succession derived from the donor of the power." (16 & 17 Vict. c. 51, s. 4). The 18th section of the Legacy Duty Act, 36 Geo. 3, c. 52, had already enacted the same thing with respect to legacy duty; and in contrast to this, the second branch of the 4th section of the Succession Duty Act provides, that in the case of a limited power of appointment taking effect upon death, the appointee, and not the appointor, is to be deemed the successor. But this only applies to such appointments under limited powers as are not subject to legacy duty under stat. 8 & 9 Vict. c. 76.

It seems to follow that a disposition of personal property, taking effect either under the ownership or

under a general power, must equally be exempt from succession duty, if the person making the disposition was domiciled abroad at the time of its taking effect. The authorities, however, take, in the case of succession duty, a distinction which is not recognised when legacy duty is under discussion, and actually construe the Succession Duty Act as imposing succession duty in the case of an appointment by will, if the testator was domiciled abroad, but not if he was domiciled in the United Kingdom!

We have on former occasions discussed the cases on appointments (7 Jur., N. S., part 2, p. 507; 10 Jur., N. S., part 2, p. 125), but the recent decision of the present Lord Chancellor in *Wallace v. The Attorney-General and Jeyes v. Shadwell* (11 Jur., N. S., part 1, p. 937; 1 Law Rep., Ch. App., 1), by making a distinction between appointments and bequests, renders it necessary to reconsider the grounds of decision in the earlier cases.

In *Re Lovelace* (5 Jur., N. S., part 1, p. 428, 694; 4 De G. & J. 340), on the occasion of the marriage of Miss Vannek with Mr. Lovelace, in the year 1817, both being then domiciled in England, a settlement was made of personal property belonging to the lady, under which Mrs. Lovelace, in the event, which happened, of her having no issue and surviving her husband, took a general power of appointment over the fund, to the income of which she was entitled for life. Soon after the marriage, she and her husband went to reside in France, and she died domiciled there in 1856, having exercised the power by will in favour of two persons, natives of France, residing and domiciled there. Sir W. P. Wood, V. C., held that no legacy or succession duty was payable on the legacies, on the untenable ground, that though the case would have been within the general terms of the 2nd section of the act, if that had stood alone, it was taken out of it by the 4th section (stated above), which was intended to govern in all cases of appointments, to the exclusion of the 2nd, and only applied to powers created by wills or settlements taking effect after the commencement of the operation of the act. This singular misapplication of the 4th section was not adopted by the Court of Appeal. They properly decided that the 4th section did not govern the case; but they held that, as the appointment took effect by virtue of a power reserved by an English settlement, it must be taken to be a succession in England; so that, though no duty was payable by the estate of Mrs. Lovelace either under the 4th section, or under the Legacy Duty Acts, duty was payable by the appointees as claiming on the death of Mrs. Lovelace under the settlement, the husband and wife, or one of them, being the predecessor. "I cannot," said Lord Justice Turner, "go the length of holding that this act of Parliament, general in its terms, does not apply to the case of a succession under a British settlement to British property, vested in British trustees, and falling under the jurisdiction of a British court." His Lordship also said, "I can find nothing in the acts which can make the property in question the property of Mrs. Lovelace, unless the case falls within the 4th section, and I have already stated that, in my

opinion, it does not; and if the property cannot be considered as the property of Mrs. Lovelace, the principle on which the cases under the Legacy Duty Acts proceed has not, as it seems to me, any application." In the subsequent case of *Re Wallop's Trusts* (10 Jur., N. S., part 1, p. 328; 1 De G., J., & S. 656), however, his Lordship thought differently, and held, that as the same section imposes the legacy duty on any legacy to be satisfied out of the personal estate of the testator, or out of any personal estate which such testator shall have power to dispose of, it could not have been intended that appointments and bequests should in any case be subject to different rules.

In *Wallop's case*, W. Wallop, by will, gave his residuary estate to trustees, in trust for his daughter Henrietta for her life; and after her death, upon such trusts as she should, if sole, by deed, or whether sole or not, by will, appoint. The testator died in 1856. Henrietta Wallop married Moses Gibaut, domiciled in Jersey. She died in that domicile, having exercised the power by giving two legacies, upon which, the fund being in court, legacy or succession duty was claimed. The Court held that succession duty was payable. "The act," said Lord Justice Turner, "extends to and embraces, not only testamentary dispositions, but dispositions of every description, and dispositions not only of personal, but of real property also. The act, therefore, was clearly intended to extend to cases which can in no way be affected by the rule that *mobilia sequuntur personam*; and it would be very difficult to say, that if in the case of real estate devised by a person domiciled out of Great Britain the devisee would be liable to the duty imposed by this act (which would clearly be the case according to the terms of the act), the legatee of the personal estate of a person so domiciled, or the appointee of the donee of a power so domiciled, was not equally intended to be so liable." This ground of decision, we shall shew, has been cut away by the Lord Chancellor, in the case of *Wallace v. The Attorney-General*. Indeed, it is not easy to see how a demand for the application of the rule that *mobilia sequuntur personam* to a case to which that rule extends, is answered by the remark, that there are cases to which the rule does not extend. The Legacy Duty Acts, as well as the Succession Duty Act, extend to cases which are not governed by that rule; but they do not exclude the application of it to cases within its scope. The reason given for the decision in *Lovelace's case*, that the appointee took under the instrument which created the power, and not under that by which it was exercised, was not noticed in *Wallop's case*, where the Court attributed to the act a much wider operation—no less than that of charging with duty every succession to property, in respect of which either the property or the successor, or a trustee for him, can be brought within the reach of a British court.

The cases we have been considering were followed by *Re Capdevielle* (10 Jur., N. S., part 1, p. 1155) and *The Attorney-General v. De Wahlstatt* (Id., p. 1159). In each of these cases the domicile of the testator was disputed; and in each the claim arose in respect of personal estate belonging to the deceased, and not passing

merely by virtue of a power of appointment. In *Capdevielle's case*, Martin and Channell, BB., held that the testator died in a French domicile; Pollock, O. B., that his domicile was English; and Bramwell, B., doubted as to the domicile. All agreed in interpreting *Wallop's case* as a decision that the domicile of the settlor makes no difference in a claim to succession duty; but the Chief Baron and Bramwell, B., expressed great doubt as to the soundness of the decision.

In *Wallace v. The Attorney-General* (11 Jur., N. S., part 1, p. 937; 1 Law Rep., Ch. App., 1), the claim was for succession duty on the personal estate, situate in England at the time of the death of Lord Henry Seymour, which passed by his will. The testator was born in France, and domiciled there from the time of his birth to that of his death, which happened in 1859. Lord Cranworth, C., after referring to *Thomson v. The Advocate-General* (12 Cl. & Fin. 1), which decided that legacy duty is not payable on the personal estate in England of a foreign testator, and to *The Attorney-General v. Napier*, which decided, conversely, that legacy duty is payable on the personal estate abroad of an English testator, held that the same rule must apply to succession duty; so that, when a person domiciled abroad bequeaths personal property in England, the legatee is not a person *becoming entitled* to that property, within the meaning of the Succession Duty Act. "In order to be brought within the act, he must be a person who becomes entitled by virtue of the laws of this country" (meaning, of course, directly under those laws, and not indirectly by virtue of their recognising and giving effect to the laws of the country of the domicile); "any wider construction would give rise to difficulties hardly to be surmounted." After pointing out some of these difficulties, his Lordship said, "I will only add, that this decision does not conflict with either of the cases decided by the Lords Justices. They were both cases of testamentary appointments, not of will; and such instruments must necessarily be construed by our own laws, not by that of the domicile of the person executing the power." This throws us back upon the ground of decision stated in *Lovelace's case*, and expressly repudiated in *Wallop's case*, namely, that the appointee takes from the person who gave the power, and not from the person who exercises it.

The result is, that Lord Cranworth holds, that the Legacy Duty Acts and the Succession Duty Act are to be construed in precisely the same manner, with reference to the domicile of the person who makes the disposition, so that a testamentary appointment by a foreign testator of personal property situate in England, under a general power, is liable to legacy duty, if the power was created by an English settlement or will, but is not liable to any duty, if the power was created by a foreign settlement or will; while Lord Justice Turner holds, that in no case is an appointment by a foreign testator liable to legacy duty, but that, in every case, an appointment of personalty in this country by a foreign testator is liable to succession duty.

We may safely consider the opinion of Lord Justice Turner in *Wallop's case*, that the scope of the Succession

sion Duty Act is not limited to dispositions by British settlers, to be overruled; and we submit, that his opinion in *Lovelace's case*, that an appointment under a general power is, for the purposes of the Succession Duty Act, a disposition by the donor of the power, is equally untenable, as being a strained application of a technical rule (that an appointee takes under the instrument which created the power), at variance with the provisions and policy of modern legislation in general, and of the Legacy and Succession Duty Acts in particular. The tendency of modern legislation has been to consider the donee of a general power of appointment as the owner of the property, so that it is liable to be taken in execution by his creditors; is subject to disposition by his assignees in bankruptcy, and, if he exercises the power by will, is liable as assets to the payment of his debts; is even charged with probate duty as part of his estate, and with legacy duty on the dispositions he makes of it; and, if he derived the power under a will, with duty as a legacy to him; or, if he derived it under a deed, with succession duty.

The express provision in the Succession Duty Act, that in the case of an appointment under a limited power, the donor of the power is the predecessor, implies, that in the case of a general power the appointor is the predecessor. If the principle of *Lovelace's case* as recognised in *Wallace v. The Attorney-General* is right, the donor of the power is in every case the predecessor. So that where a husband by will settles personally upon such trusts as his wife shall appoint—if she appoints by will to her second husband he must pay duty at 10l. per cent.; but if she appoints to her own separate use, and allows her second husband to take the property on her death, he pays nothing. Again, if she appoints to her children by a second marriage, they must pay for what they take under the appointment at 10l. per cent.; but if, being considerably indebted, and having personal property of her own, she increases her assets by exercising the power in favour of her children by a second marriage, and also makes them her residuary legatees, the question will arise whether the children can marshal the creditors on the appointed fund, so as to leave the personally bequeathed to them. (See *Fleming v. Buchanan*, 3 De G., Mac., & G. 976).

It may be worth while to observe, that the statement of the law contained in the work on Succession Duty by Mr. A. Hanson (the present comptroller of the department) was never justified by any of the authorities, and is clearly inconsistent with the principle of the Lord Chancellor's decision. Mr. Hanson says (p. 3):—"With regard, however, to personal property, of which the owner divests himself in his lifetime and disposes by deed or instrument inter vivos, so as to create a succession, it is evident that the law of the settlor's domicile can have no effect in determining the question, whether the succession is chargeable with duty under this act. *Trust property, if actually situate within this country at the time when the succession was created, or even, it is apprehended, at any time afterwards during the continuance of the disposition, must be treated as liable to succession duty, whatever may*

be the domicile of the settlor." In other words, if the Emperor of the French, or any other wealthy and cautious despot, should settle by instrument inter vivos the immense provision he may have made against a rainy day of investments in this country, and die in the country of his choice, or during involuntary exile from it, Mr. Hanson is prepared to claim succession duty from his successor. There is clearly no authority for such a claim. In *Lovelace's case* the Court relied on the relation of the appointment to the settlement, and on the fact that the settlement was an English settlement, made in England on the marriage of two English persons. Whether a settlement executed in this country by a foreigner temporarily residing but not domiciled here, would be within the scope of the act, has not been decided; but we need have little hesitation in asserting that it would not, whether the settlement were effected by an actual transfer of specific property, or by a mere contract to pay money. The rule that personality follows the person, extends to all rights and liabilities in relation to personality, though not necessarily to all the forms by which those rights are created or disposed of. Thus shares in an English company can only be transferred in accordance with the rules of English law, but a succession under a foreign settlement of such shares is not liable to succession duty.

We may here notice a question on the act which the authorities at Somerset House appear to have decided against the Crown, contrary, as we think, to the plain construction of the act. We refer to the succession by way of dower under the old law of dower. If A. devises real estate to B. in fee, or leaves it to descend to B., and B. was married to his wife before the 2nd January, 1834, the devise or descent is, in effect, as to one-third of the property, a devise or devolution to B. for his life, remainder to B.'s wife for her life, remainder to B. in fee, and on B.'s death, his widow takes a succession from A., on which she should pay duty; and again, on her death, B.'s heir or devisee takes a fresh succession, on which he should pay duty. So that, in case of a sale by B. and his wife, the purchaser ought to require provision to be made for these duties. We understand that, notwithstanding the case of *Harding v. Harding* (7 Jur., N. S., part 1, p. 906; 2 Giff. 597), this view of the position of a purchaser from husband and wife is ignored at Somerset House. Of course, if the dower is, under the Dower Act, absolutely in the husband's power, the question cannot arise; and this consideration may serve to shew the unsoundness of the decisions we have been considering with respect to general powers.

GENERAL ORDER IN LUNACY.

10th February, 1866.

WHEREAS since the General Orders in Lunacy, bearing date the 12th January, 1855, were made, it has become the duty of the legal as well as of the medical visitors of lunatics to visit lunatics, and to make inquiries as to their care and treatment and the arrangements for their maintenance and comfort, and otherwise respecting them.

Now I, Robert Monsey Baron Cranworth, Lord High Chancellor of Great Britain, intrusted by virtue of her Majesty the Queen's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, do, with the advice and assistance of the Right Hon. Sir James Lewis Knight Bruce and the Right Hon. Sir George James Turner, the Lords Justices of

the Court of Appeal in Chancery, also being intrusted as aforesaid, and by virtue of and in exercise of the powers or authorities in this behalf vested in me by the Lunacy Regulation Act, 1853, and of every other power or authority in anywise enabling me as Lord Chancellor, or as being intrusted as aforesaid, order as follows:—

I.—That the legal as well as the medical visitors of lunatics shall make the inquiries and perform the duties directed by the said General Orders, and that the reports of the legal visitor shall be treated and acted upon in the same manner as is directed by the said General Orders with respect to the reports of the medical visitors.

II.—The said General Orders shall in all respects apply and extend to the legal in the same manner as to the medical visitors of lunatics.

CRANWORTH, C.
J. L. KNIGHT BRUCE, L. J.
G. J. TURNER, L. J.

Imperial Parliament.

HOUSE OF LORDS.—Friday, Feb. 16.

THE PUBLIC LOAN ACTS.

Earl *Powis* called the attention of the First Lord of the Treasury to the impediment to the beneficial working of the Public Loan Acts, caused by the Treasury minute of 1869, declining any further reduction of interest below 5l. per cent. He did not complain of the action of the Treasury so far as related to loans granted to companies undertaking works for private profit; but he must say that he did think that it was unjust and inexpedient to exact so high a rate as 5l. per cent. for money lent for public purposes, on the security of poor rates, borough rates, and county rates. The State ought not to make a profit out of the assistance which it gave by loan to such undertakings. By so doing they increased the expense, and therefore discouraged the execution of many public works. There could be no need for the Government to charge 5l. per cent. for loans on the security of rates, because the security was perfectly safe, while they themselves obtained the money at something like 3l. per cent.

Earl *Russell* said that before 1859 the rate of interest on loans granted by the Public Loan Commissioners varied with the rate of interest in the market. That practice was found very inconvenient, and therefore, in 1859, the Treasury decided that the uniform rate of interest should be 5l. per cent. That was not a very high rate, and he believed it was far more conducive to the public interest that there should be a fixed than a fluctuating rate. Exceptions had, however, been made from time to time in favour of useful undertakings of a beneficial character for which money had been lent at a lower rate than 5l. per cent.

Lord *Overstone* said that if the Government interfered to divert capital to particular classes of undertakings, they ought not to supply that capital at a lower rate than that which persons were compelled to pay who borrowed money in the open market to carry on their useful works. Looking at the rate of interest which had prevailed for the last few years, he must say that he was surprised to hear 5l. per cent. complained of as an unduly high rate of interest. The demand for capital to meet the various undertakings which had been entered into on all sides was very great at the present time, as was evident from the current rate of interest, and he thought it would be most unjust if the Government, by offering money at a very low rate of interest, were to divert capital into a certain class of undertakings, and were thus to add to the embarrassments under which men of business who had to obtain their capital in the open market were now suffering.

HOUSE OF COMMONS.—Friday, Feb. 16.

THE FIRE INSURANCE DUTY.

Mr. *Sheridan* gave notice that he would, before Easter, move the following resolution, viz. "That in the opinion of this House, a further reduction of the duty on fire insurances

would have a tendency to bring within the protection of insurance a large amount of the present uninsured property of the country, and at the same time materially improve the chance of the repayment to the revenue of the amount conceded by the previous reductions of the duty; and that, therefore, it is expedient that a further reduction of the duty should be made at the earliest opportunity."

Monday, Feb. 19.

HAMPSTEAD, HIGHGATE, AND CHARING-CROSS RAILWAY.

On the second reading of this bill being moved,

Mr. *T. Hughes* moved as an amendment, that the bill be read a second time that day six months. He said, this was a case of a railway proposing to pass through a poor district, pulling down poor men's houses, without giving them any compensation. The Lands Clauses Act was no more fitted to regulate such a matter than an act of Queen Elizabeth, because, when it was passed, it had never been contemplated that a railway would run through the heart of London. The principle of the act was, that when a house was pulled down, the owner should be compensated or reinstated; poor tenants were ignored altogether, so that, in effect, the only persons compensated were the rich. He thought that the House ought not to grant such powers, without putting the poor on the same footing as the rich, and obliging the company demolishing their habitations to reinstate or compensate them. He would on every occasion oppose bills which did not do this justice to the poor.

Mr. *White* seconded the motion.

Mr. *Locke* supported the amendment, and expressed the opinion, that there were railways enough running into the heart of London.

Lord *Cranbourne* indorsed the principle of compensating the poor, but pointed out, that if the principle affirmed by the amendment was adopted, it would be tantamount to rejecting every railway bill. The proper course to pursue would be to alter the Lands Clauses Act, so as to meet what was undoubtedly a defect in the law.

Mr. *Walpole* suggested to the hon. member for Lambeth, to move the postponement of the bill for two months, and in the meantime to propose to the House an alteration in the Lands Clauses Act.

Mr. *T. Hughes* expressed his willingness to adopt the suggestion. He did not desire to offer any factious opposition to any bill for the improvement of the metropolis by a railway; but until the clause for the amendment of the Lands Clauses Consolidation Bill was restored, he knew no other course to pursue than that he had proposed.

Mr. *T. B. Potter* suggested, that in any bills by which powers were asked for to demolish the dwellings of the working classes in populous localities, a clause should be introduced, compelling railway companies or other bodies to erect blocks of houses for those classes in the same locality.

Colonel *W. Patten* thought they might allow the bill to be read a second time, and then a clause could be inserted in committee to meet the views of the hon. member for Lambeth.

Mr. *T. Hughes* then withdrew his amendment, and moved, that the further consideration of the bill be postponed for a week.

Mr. *Hankey* thought the suggestion of the member for Lancashire was a good one.

Mr. *Dodson* did not wish to oppose the present amendment, but he thought the hon. member for Lambeth should first introduce the bill he had referred to, before the House was called upon to apply this principle to all metropolitan bills.

Mr. *T. Hughes* said he accepted the suggestion of the member for North Lancashire.

The amendment was then withdrawn, and the bill was read a second time.

RAILWAY DEBENTURES.

Mr. *Hankey* asked the President of the Board of Trade, whether he intended to propose any measure this session for the registration of debentures issued by railway companies, with the view of enabling debenture holders, or lenders of money on debentures, to ascertain whether the companies were in a position legally to issue such debentures.

Mr. *Gibson* said the subject referred to had been considered, and a measure was in course of preparation for the

purpose of giving the public security, that the statutory debentures issued by railway companies did not exceed the limits which such companies were entitled to exercise under their acts of Parliament.

Tuesday, Feb. 20.

THE NEW COURTS OF LAW.

Mr. C. Bentinck asked the First Commissioner of Works whether he would state the names of the gentlemen appointed to serve on the committee for the selection of the architects who were to compete for the new law courts; whether the number of architects was determined, and who was to have the final decision on the merits of the plans; and whether he would lay upon the table the proceedings of the Royal Commission.

Mr. Cowper said, by the Courts of Justice Building Act of last year it was provided that the plans and arrangements of the courts of justice should be referred to Parliament by the Treasury, by the advice and concurrence of such persons as her Majesty might appoint for that purpose. A commission called the Courts of Justice Commission was appointed, and it consisted of the Lord Chancellor, most of the judges, and members of every branch and division of the legal profession; and that commission had carefully considered the steps that ought to be taken in the selection of an architect, and they had prepared instructions, and they came to the conclusion that the competitors for the design of the building should be limited to the number of six. The actual selection of those six architects had been confided to a committee composed partly by the nomination of the Courts of Justice Commission and partly by the nomination of the Treasury. The persons nominated by the commission were the Lord Chief Justice of England and the Attorney-General, and the other persons were the Chancellor of the Exchequer, the First Commissioner of Works, and the hon. member for Perthshire. They met and selected six architects; and the committee were also to decide upon the selection of the design for the erection of the buildings. With regard to the proceedings of the Royal Commission, that commission had not yet come to any decision as to the time and manner in which they would report their proceedings. Therefore, he was unable to say when those proceedings would be published. These proceedings were very voluminous, and would be published in the ordinary course.

Later in the day,

Mr. Cowper said, that the names of the restricted number of architects referred to on this question were Mr. Scott, Mr. Barry, Mr. Street, Mr. Waterhouse, Mr. Wyatt, and Mr. Hardwick.

Wednesday, Feb. 21.

JURIES IN CRIMINAL CASES.

Sir C. O'Loghlen moved the second reading of this bill, the objects of which he explained by referring to the case of Charlotte Winsor. It affected the administration of the law in regard to the discharge of juries. The bill would amend the defects of the existing law, declare what the law was, and at the same time codify the law on the keeping together and the discharge of juries. At present juries were allowed to separate when the trial lasted more than a day in misdemeanour cases, but not in criminal. There was no ground in reason for the distinction; and therefore he proposed to give judges in criminal cases discretionary power to allow juries to separate. The existing practice led to criminal cases being continued very late in the evening, to prevent juries being locked up; and every lawyer knew that protracting the administration of justice to a late hour was very objectionable. It often led also to a denial of justice. The next amendment was to remedy an inconvenience which had arisen in Ireland. The custom, when a criminal trial took place which lasted over the day, was, to take the jury to an hotel and keep them there for the night. In certain counties in Ireland, where the county court house was in a city, the judges would not allow the jury to go to an hotel in the city, because it was not in the jurisdiction of the county; and the jury were, therefore, locked up all night in the court house. He proposed to remedy that defect by allowing such juries to be taken to an hotel in such cities. The third amendment was to allow the judge to order the jury refreshment when they had retired to consider their verdict. The custom of refusing

the jury refreshment was a relic of a barbarous age. The late Mr. Justice Crompton and the present Chief Justice had recently put on record their opinion that the sooner it was abolished the better. The other portion of the bill had reference to the discharge of juries. The law on this subject was in a very unsatisfactory position; and he proposed, except in certain cases, to be specified in his bill, that no judge should have power to discharge juries. He proposed to give power to the judge to discharge a jury when one of their number got ill; when one of the witnesses or when the accused got ill; and when the jury separated without leave. The next point would meet such a case as that of Charlotte Winsor, by giving the judge power to discharge a jury when they could not agree, in criminal cases, after they had been kept together a reasonable time. He proposed that a jury should be discharged also in the event of the judge falling ill. The only remaining clause which required notice was one empowering the judge to receive a verdict on Sunday. At present it was doubtful whether a verdict given on Sunday would be lawful. He proposed to set that matter at rest, by conferring the same power that her Majesty had recently exercised by giving her royal assent to a bill on Sunday morning. He hoped the House would allow the bill to be read a second time, and he should be quite ready in committee to yield to any valid objections which could be raised against its provisions.

Mr. Neate seconded the motion.

Mr. S. B. Miller opposed the bill. As far as it was declaratory, it was unnecessary, and as far as it was new, it involved a most mischievous and dangerous principle. In Ireland, it would lead in many cases to prisoners being tried outside the jury box, and to cases being adjourned for fresh evidence against prisoners who stood on their deliverance. Such legislation was unnecessary, and should not be encouraged by the House. Supplying the jury with provisions was of little importance, as it was included in the power of the judge to discharge them after keeping them together for a reasonable time.

Mr. Watkin supported the bill on the common sense view of the question, that the present state of the law on the subject was objectionable. If that were so, a *prima facie* case was made out for the second reading, and all details could be arranged in committee.

Mr. G. Hardy objected to the power the bill gave to the judge to discharge the jury, because he could quite believe, that in many cases it would lead to the case being tried outside the jury box. He should offer no objection to allowing the jury refreshment, though the necessity for such a course seldom arose. No *præcise* rules ought to be laid down with regard to the power of the judge to discharge a jury. It would not be right for the House to pledge itself to the principle of the bill, until the case of Charlotte Winsor had been decided by the Exchequer Chamber.

The Solicitor-General said, if the bill had been limited to allowing juries refreshment, he should not have opposed. He trusted the House would not agree to the second reading, because, if the Exchequer Chamber agreed with the Court of Queen's Bench in the case now pending by writ of error, and affirmed its decision, the law on the important subject of the discharge of juries, in case of non-agreement, would be settled as clearly as it could be by words introduced into an act of Parliament. It was to be hoped, therefore, that no legislation would take place until it was known whether legislation was necessary or not. As regarded the codifying portion of the bill, he agreed to that principle, so far as it could be carried. Other principles, however, would either inconveniently hamper a judge, or give him power which no judge ought to possess. In few capital cases would the verdict be satisfactory to the public, if juries were allowed to separate before coming to their decision. If the hon. baronet brought in a bill of more limited scope, he should not oppose it.

Mr. George also opposed the bill.

Mr. D. Griffiths offered some remarks on objectionable features in the existing mode of summoning juries, without remunerating them for their services, and recommended to the hon. baronet, if he brought in another bill, to deal with such objectionable features.

Sir C. O'Loghlen then said he would postpone the bill until the 18th April.

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THE JURIST.

LONDON, MARCH 3, 1866.

PUBLIC RIGHTS OF RECREATION IN OPEN
AND WASTE LANDS.

THE question of the rights of the public in open and waste lands, for the purposes of recreation and resort, is, no doubt, one of the great questions of the day. The public are deeply indebted to members of Parliament, like Mr. Locke or Mr. Lefevre, who take an interest in the subject, to which the crowded state of our large cities and towns now gives additional and almost overwhelming importance, upon all sorts of grounds—sanitary, social, and moral. We are now perfectly aware that the health and good morals of a place cannot be kept up without open spaces for healthful recreation; and to the youth of a place, and as a means of securing their healthy growth, it is of an importance that can hardly be exaggerated. Yet, according to some narrow, technical, legal views, it would actually appear, that even in such open places as have been for ages used for such purposes, the public have no rights at all. If they have not, they ought to have. But let us see, first, if they have *not*. It is good, in the first instance, to consider the question in the light of the law as it is, and see exactly what are the limits of any existing legal rights, if rights there be; and then see what, if anything, is required from legislation, either in the way of the limitation, regulation, or protection of such rights. We are much mistaken if it will not turn out that the public *have* rights in these places; or that, if they have not, they are prevented from having legal rights merely by reason of a technical legal quibble, having no real or substantial foundation, either in right or reason; and if so, then, on the one hand, it will be established that this is just the case for legislation; and, on the other hand, it will appear that the legislation required is only to remove a troublesome technical obstacle out of the way of a right, practically possessed and exercised, and legal to some extent, and the legalisation of which to the entire extent demanded can involve no real injury to anybody, while it will be of an advantage to all.

That *boroughs* may have customs is clearly proved by Co. Litt. sect. 165; and the preceding section proves that this includes cities and towns, "for the towns that now be cities or counties, in old times were boroughs, and called boroughs;" and Coke, in his comments thereon, says, "A city is a borough incorporate," &c., and he quotes an ancient charter of the Conqueror, that in *burgis ubi consuetudines regni nostri, et jus nostrum commune deperire non possunt*, &c.; whence it plainly appears that there may be customs of the realm; which is, in fact, the immemorial language of pleading, as descriptive of the common law; so that it is difficult to see what the judges in after times meant, when they said that a custom could not belong to the country at large, because it must then be common law, seeing that the very definition of common law is the *custom of the realm*; and it does not appear

easy to see how shewing a matter to be subject of custom, if at all, for all the people of the country, can make it bad as a custom; or how a thing is less legal, because it is claimable as a common-law right, seeing that the proper way of pleading such a right is as the custom of the realm. However, at all events, *cities* may have customs. And although it is true that "custom" is generally used in the sense of customs of a particular place (and it is in that sense Coke must be understood when, in his comments on the next section (165), he says that custom is one of the main supports of the law of England, those laws being divided into common law, statute law, and custom), the very context shews that the word has *also* a larger signification, and especially the very next sentence:—"Consuetudo quandoque pro lege servatur in partibus ubi fuerit more utentium approbata et vicem legis obtineat." And when he goes on in his comments, it is clear he is speaking of particular customs. Then he says, "It is necessary to know what customs may be alleged in an upland town which is neither city nor borough," as to which antiquaries teach us that the word "town" (the same as the Saxon word "tun") was applied to places so small as a farm; and then he proceeds:—"In an upland town" (that is, neither city nor borough), certain customs cannot be alleged, "but these are customs which may be alleged in cities or boroughs; but an upland town may allege a custom to have a way to their church, the *well ordering of their commons*, or such like thing;" that is, the very *smallest* places may have such customs, a multis fortiori larger places, such as cities or boroughs; for the very force of Coke's comment is, that large places may have customs which smaller places cannot have. Yet the very smallest, he says, may have customs as to their commons. He adds, "And it is to be observed, that in special cases a custom may be alleged within a borough, a city, a hundred, or a *county*, but a custom cannot be alleged generally within the kingdom, for that is the common law." It is hardly necessary to dispute the latter part of the proposition, for probably the limits of a *county* would be large enough to meet all the requirements of an argument on behalf of public rights. But if it were necessary to shew that the last part of the sentence was a mere slip and mistake, it might be shewn from the context of the comments, which speak of customs of the realm; and from the ancient and immemorial language of pleading, which always describes the common law as a *custom of the realm*; and Blackstone lays it down that customs are general as well as particular, and may extend to the realm, as the custom as to carriers, and the like.

The greatest fountain of legal learning on the subject, however, is perhaps *Gateward's case* (6 Rep. 60), where the distinction was drawn between customs for easements, and prescriptions, or customs, for profit à prendre; and it was held that the latter could not be, for by reason of mere inhabitancy, commorancy, or residence, because that might be so very fluctuating and temporary. "What estate shall he have who is inhabitant in the common, where it appears he has no estate or interest in the house, but a mere habitation or

dwelling? Such common will be transitory and altogether uncertain, for it will follow the person, and for no certain time, but during his inhabitancy; for in these words, 'inhabitants and residents,' are included tenant at will, and he who has no interest, but only has habitation and dwelling" i. e. an occupier from day to day, or the inmate of an inn. "But a difference was taken by the Court between an interest or profit to be taken in another's soil" (as in the case of the *commoner's* right in a common), "and an *easement* in another's soil. So a custom that every *inhabitant* of a town shall have a way over the land to church or to market, is good, for it is but an *easement*." And so, of course, it will be of an *easement* to play or sport, as was afterwards distinctly held. And the previous part of that case clearly shews, what has been strangely overlooked, that inhabitants would include *lodgers for a day*, or from day to day, if not guests at an inn. Whence it would follow, that if a man went down overnight and took a room for a day, he would be an inhabitant, and could legally set up an *easement*. "But a custom that an inhabitant or resident shall take a *profit* is merely void." (Ib.) The whole context implies that such a custom, that every inhabitant or resident shall have an *easement*, would be *good*. And it need hardly be stated that a long series of cases, prior and subsequent, have established that a man may be as well a tenant or occupant from day to day, or for a day, as for a year or years, for an occupant, even at will, is distinctly stated to be an inhabitant; and the doctrine has been distinctly applied to furnished lodgings, and it has been always recognised that a man may have *lodgings* at an inn; and of course for a day or a night, as the case may be. (Vide 8 Rep. 32; 2 Brownl. 254; 1 Salk. 386; *Richardson v. Langridge*, 4 Taunt. 132; *Edge v. Strafford*, 1 Cr. & J. 391; *Packer v. Gibbons*, 1 Q. B. 10; *Braithwaite v. Hitchcock*, 10 M. & W. 494).

Numerous authorities uphold the doctrine, that inhabitants may prescribe, or lay a custom for an *easement*; nor has it ever been disputed, but always admitted (*Marshall v. Hunter*, 2 Brownl. 210); and many cases also establish that *counties* may have customs. (*Rosewell v. Welsh*, 3 Bulst. 213). A custom may be for a manor, but then it must always be within the manor or county. (*Teulon v. Talmarsh*, 2 Show. 131). Every one knows that the custom of the county (or of "the country," as it is called) is constantly recognised. (Bro. Customs, p. 129; *Dalby v. Hirst*, 1 Bro. & B. 224; *Hutton v. Warren*, 1 M. & W. 466; *Mousley v. Leadlam*, 21 L. J., Q. B. 64). And the custom of *merchants*, though it is admitted to be part of the common law or custom of the *nation*, was of old always pleaded as a *custom*, as may be seen by looking at the old entries. Thus, on a plea that there was a custom within a manor that every inhabitant should have a way over the locus in quo, was held bad only for fault of *pleading*, and it was plainly implied that that there might be such a custom. (*Cornelius v. Taylor*, Sid. 237). So, of another case of custom of a manor (*Chaires v. Beltsworth*, 3 Lev. 190), and we need not point out how enormously extensive a manor or parish may be. There was, indeed, a well-established prin-

ciple, that no custom could be upheld contrary to common-law rights of property, as a custom for the men of a county to dig on the land or the shore, &c., for this is contrary to common right and reason, that is, to the rights of *property* vested in the owner of the soil. (Year Book, 8 Edw. 4, 181). But this is equally good as regards prescriptions which must be consistent with the rights of property, and cannot be allowed to the extent which would destroy rights of property, as has lately been held by the House of Lords. And this is the reason why there may not be a custom to take from or injure the land. So a custom which may be general and extend to all the subjects of England, and is not warranted by, but contrary to the common law, is void. (*Sherborn v. Bosstock*, Fitz. 5).

In *Bell v. Wardell* (Willes, 202), the declaration charged treading down the corn in May, and the plea alleged a custom for the inhabitants of the town, at all reasonable times, to exercise the privilege of riding and walking, &c.; and it was held bad, *not* on the ground that the inhabitants could not set up such a right, but because the custom came to this—that all the inhabitants might ride over the plaintiff's corn, and take from him all the profits of his land. So in another case, cited in a note (Id. 205), where the plea was for all the inhabitants of a town to play at any sports on pasture land at *all* times of the year, without any limitation. It was held bad, because it was illegal and unreasonable in not limiting either the nature of the *easement*, or the time of the year at which it might have been exercised. That is, because it was so unlimited that it might interfere with *property*. So, in *Solly v. Robinson* (2 T. R. 758), where it was a *profit à prendre*, which cannot be claimed by the inhabitants of a place (*Grimstead v. Marlow*, 4 T. R. 717), but there may be a custom of a parish or a county, not amounting to a right of *profit à prendre* in alieno solo. (*Eaglesworth v. Dales*, 1 Dougl. 101; *Evans v. Ogilvie*, 2 Y. & J. 79).

From this principle has been carelessly deduced the inference conveyed in the loose and vague proposition that a custom which applies to all England cannot be good as a custom; which would destroy the common law, the whole of which is custom, and only custom. The true proposition is, that a custom which extends, or may extend or apply, all over England, must not be *contrary* to the common law, or inconsistent with the common rights of property, for which there must be some particular custom or prescription, so limited as to prevent what would otherwise be destructive to property; a custom for all England, or even for all the inhabitants of a place, to take common is void, because the commons would be destroyed. But this is only an illustration of the general proposition that customs must be reasonable, and must not be destructive of property. The supposed proposition that a custom is bad which applies all over England, is not supported by principle or authority. The cases which it is supposed to establish it do not do so. Thus, in *Blundell v. Catterell* (5 B. & Al. 268), the proposition really decided and established was, that there was no general custom inconsistent with the rights of the Crown as to the sea shore; not that

there could not be a general custom, of which all the inhabitants of England could claim the benefit. So in another case on the same subject it was held, that there is not at common law a general right in the public to enter the sea shore for the purpose of taking sea weed. (*Howe v. Stowell*, 1 Alc. & Nap. 348). But it is to be borne in mind, as to both these cases, that the Crown has the soil between high and low water, and that the public has a common-law right or easement of passing and repassing over it. (*The Attorney-General v. Burridge*, 10 Price, 350). It is on this principle that a highway is not claimable merely by way of custom; for user by the public is not sufficient to constitute it, since it is a partial or total relinquishment of right of property; and hence the priority of the landlord, and a dedication by him to the public, are essential to constitute it a public highway: that is a permanent dedication (*Wood v. Veal*, 5 B. & Al. 454); and though there may be a limitation of such dedication or an exception (*Stafford v. Coyne*, 7 B. & Cr. 257), there cannot be a reservation of any right which would conflict with the right of way (*Rex v. Leake*, 5 B. & Ad. 469); and thus it is, in substance, a parting with rights of property, which is quite different from mere easement, and far beyond the scope of mere custom. The true proposition, therefore, is, that there cannot be a custom set up for all the inhabitants of England, nor of a place, destructive of rights of property.

What has that to do with custom for mere temporary easements as to sport or play? Thus a custom for all the inhabitants of a vill to dance in the close for recreation, even although said to be at all times, was held good (*Abbott v. Weekley*, 1 Lev. 171), although possibly, in strictness, it should have been limited to reasonable times. (*Elliott v. Hardy*, 3 Bro. 346). But it was admitted that inhabitants might have a custom for an easement; and it has been shewn that inhabitants of a manor, a parish, or county, may have a custom (vide *suprà*).

It was certainly held in *Sherborn v. Bostock* (Fitz. 5), that a custom laid as the particular custom of a place, but which might extend to all the subjects of England, and would be contrary to the common law, would be bad; but that is very different. It was upon the supposed authority of that case, indeed, that *Fitch v. Rawlings* (2 H. Bl. 399) was decided, where it was held, that a custom that all the inhabitants for the time being of a parish might play upon a piece of ground in the parish, at seasonable times, was bad; but that case is not to be reconciled with the current of previous law upon the subject, and is so clearly *contrary* thereto that it cannot be law.

There are several grounds on which it can be shewn not to be law. First, it assumes that "all the inhabitants for the time being of a parish or place," necessarily or reasonably includes all the inhabitants of England; which is absurd; for to be an inhabitant of a place, one must, at least, have some residence or lodging there, however temporary, even although it be for a night or a day. Next, it was assumed, that even supposing the custom would amount to a custom for

all England (as it would to this extent, that it would apply to any of them who went down to reside in the parish for a day, for the purpose of the play), it was, therefore, necessarily bad. And, lastly, it assumed that the law as to easements and rights of profit was the same, which is not so.

To support the decision in *Fitch v. Rawlings*, it must be maintained that a vagrant is an "inhabitant," whereas he is just the contrary of an inhabitant. On the other hand, it must be maintained, in order to falsify the plea, that a person who is an occupant for a day is not an "inhabitant," which is clearly contrary to law. For the same principle would exclude all but tenants for years, which surely is absurd. The plea was found to be proved, however, in point of fact, just as in *Abbott v. Weekley*; and though, in substance, the same plea as was there held good—or rather a better plea, for it was limited to "reasonable times"—it was held *bad*. The decision, therefore, is contrary to that previous case, and as it is of no greater authority, is, for that reason alone, of no authority at all. It is strange, therefore, that in the recent case of *Coventry v. Willes*, it should have been deemed to be decisive. To say the least, it was of no greater authority than the previous case of *Abbott v. Weekley*; for the plea of a custom, that all the inhabitants should sport, must mean all the inhabitants for "the time being;" that is, at the time they sported.

So per Lord Campbell, C. J., in the case of *Bland v. Lipscombe* (4 El. & Bl. 713), "A custom for all the inhabitants of a parish to dance on a particular place, is good;" and if for a parish, why not for a city, or a town, or a county? The case of *Mounsey v. Isenay* (3 Exch. 493) turned entirely on the construction of the Prescription Act, and is, in the opinion of some of the best lawyers in the profession, wrong; but even if not, it does not affect the present question as to the validity of a custom for the recreation of a district as large as a county. For some reason or other *Coventry v. Willes* (3 N. R. 119) is not reported in the regular reports, nor in the Law Journal. In the report in 3 N. R. 120, a case of *Reynolds v. Edwards* (Willes, 282), which has nothing to do with the subject, is cited; and *Wardell v. Bell* (Id. 202) is not cited, nor the case there cited in *notis*, nor other cases in which customs for such easements have been held valid. *Tyson v. Smith* (9 Ad. & El. 406) was cited, but it does not seem to have been sufficiently considered, as it seems to involve the principle negatived by the decision. Hardly any of the cases cited had anything to do with the question which was raised; and the question which was raised was not the real question, which is, what rights of recreation inhabitants of a parish, a city, a town, or a county may have upon land within the boundaries of those districts respectively, and who are inhabitants for that purpose. The Court seems to have decided upon the assumption that *Fitch v. Rawlings* was in point, and conclusive, and their attention does not seem to have been called distinctly to the many authorities inconsistent with it, nor to the fact that the decision in *Tyson v. Smith*, which is hardly consistent with it, was the decision of a Court of Error. On the whole, therefore, the case

of *Covenry v. Willes* seems to be of little authority, and, perhaps, for that reason is not reported in the regular reports. If it was rightly decided, it does not conclude the question, whether the inhabitants of the town might not have claimed the right; still less whether a lodger or inmate of an inn would not have been an inhabitant; which latter question could only be raised by bill of exceptions, or points reserved at the trial. It certainly decided that such a custom could not be laid for all the subjects of the realm, but it did so on the authority of *Fitch v. Rawlings*, which itself is not supportable, and on a ground which seems clearly fallacious, that a custom for the whole realm must be bad, in which case all our common law is bad.

The law of England, it is conceived, is, that all the inhabitants of a town, or a parish, a city, or a county, may claim a right by custom to any easement in any waste lands within the town, or city, or county, provided it is not inconsistent with, or destructive to, the rights of property, or prescriptive rights vested in the owner of the soil or other parties, as, for instance, commoners; and that any person is an inhabitant who has a lodging, be it for a day or a night. That question, be it observed, did not arise either in *Fitch v. Rawlings* or *Covenry v. Willes*; for, in the first case, the plea was found to be proved, and no bill of exceptions taken or point reserved as to what were "inhabitants." And in the recent case, the plea did not allege that the defendant was an "inhabitant" of Newmarket, so that the point did not, and could not, arise. What was held there was, that *all* the inhabitants of England could not set up an easement in a place as a custom of that place, even for a particular day in a year. Even that we doubt to be law, and we cannot see, upon principle, why it should not be law to be a custom of the place for all England, as it may be, and could be, a custom of all England as to an user in that particular place.

By the custom of England, an innkeeper at Newmarket is bound to receive a guest, wherever he may come from, if he has room; and we cannot see why, upon the custom of the place, the guest, being there, may not sport, or see the sports, on a public place there set apart once a year for the purpose. In both cases all England, in a certain sense, may take advantage of the custom; but the capacity of the place itself imposes a necessary limitation, and the place will probably be always large enough for all those who can find lodgings in the town. There is, therefore, no difficulty, as regards the rights of property in the soil, or the rights of the settled inhabitants. What difference can it make to either, that a few more persons, who cannot be more than the town can entertain, come down to enjoy the sport? For the day or days set apart by custom for the inhabitants, the owner cannot use the soil, and a few more can make no difference. The absurdities which follow from a contrary doctrine are numerous and prodigious. A person coming in from the next parish to see the races might, apart from license, be sued as a trespasser. And one of the judges put as an illustration, that only parishioners could set up a custom to go to church.

So that a Londoner coming down to dine with a friend, or to hear a celebrated preacher, would be a trespasser! Surely, in common sense, such persons are "inhabitants" for such a purpose, for the exercise of a mere harmless easement! Now, if they are not, then there is just a case for legislation; that is, to remove a technical troublesome obstacle in the way of a substantial legal right. The inhabitants clearly have the right, or the whole law of England on the subject must be set at naught; and the inhabitants of a city or county may have it. Thus, therefore, the inhabitants of the county of Middlesex might have an easement to resort to Hampstead Heath for recreation. At all events, the settled inhabitants of Hampstead might. Then the owner of the soil cannot get rid of those rights; and what difference can it make to him that a few more, coming, possibly, from the county of the city of London, or the borders of another county, may resort to the place? Put the case of a visitor from London to the house of an inhabitant—a settled rated inhabitant—of Hampstead; is that visitor—a visitor for a day, or for an afternoon—a trespasser for going on the heath? If so, then surely it is a case for legislation, to remedy such an absurdity. And there might be an act declaring and enacting, that wherever by law the inhabitants of a place, county, parish, city, town, or village, have an easement for exercise, or recreation, or resort, in any open and waste land within the same, any person lawfully being therein may exercise such easement, and resort to or use such place, for the purpose of lawful recreation, doing no unnecessary damage to the soil, nor interfering with any rights of common therein. Such is the rough sketch of an act which might settle this vexed question.

Correspondence.

STATUTE REFORM.

TO THE EDITOR OF "THE JURIST."

SIR,—For many years past a stock subject of declamation has been the accumulation of new laws, and it seems to have been assumed that the thick volume of Public General Statutes, which annually loads our bookshelves, is really filled with new laws, all made in one session. A very slight investigation will, however, shew this to be entirely a mistake, and that a very large proportion of the Public General Acts, as printed, are either temporary, repetitions, or local, and need not be forced upon the numerous purchasers of the statutes at large.

The following analysis of the statutes for 1865 will clearly exhibit this. They are 127 in number, covering 872 pages, and may conveniently be divided into four classes.

First, five statutes, covering twelve pages, are not statutes or laws at all, but merely warrants to the treasury or bank to apply money to the public service, and are totally useless before the end of the session, and ought not to be printed with the statutes.

Secondly, the Mutiny Act and the Marine Mutiny Act, covering 110 pages; these of course are mere repetitions, and though, for constitutional reasons, it is necessary to pass them annually, there can be no

reason, constitutional or otherwise, why a Mutiny Clauses Consolidation Act and a Marine Mutiny Clauses Consolidation Act should not be passed, and the necessary acts of each subsequent session would then not be of more than two pages each. Alterations of course would be made from time to time, and every tenth year new consolidation acts should be passed, incorporating all the alterations made in the previous nine years.

Thirdly, the acts confirming provisional orders under the Local Government Act, 1858, and the General Pier and Harbour Act, 1861; of these there are eight, covering no less than 282 pages, with purely local matter. Why these were made Public General Acts it is not easy to imagine, for anything more local there cannot be; in cap. 114, for instance, the list of tolls to be taken at the possible pier of the doubtful port of Llandrillo occupies thirteen pages, but can hardly be considered of a public or general character. These acts should at once be made local, and removed from the Public General Statute Book.

Fourthly, the really general statutes relating to the whole kingdom, and those relating to the Metropolis, Ireland, or Scotland, which may fairly be considered public; these together occupy but 388 pages, considerably less than half those contained in the volume, and are all that need really be printed as public or general.

There are many young members in the present Parliament, and it would not be easy to suggest any thing on which one of them, ambitious of doing some good in his generation, might more usefully employ himself. He would probably have to encounter some opposition from the Queen's printer, and more still from the officials and lovers of routine, but let him persevere, and if he succeeds, he will have done more towards the reform of the Statute Book than we are likely to see from the labours of many commissions.

C. M.

Lincoln's Inn, Feb. 24, 1866.

PRACTICE BEFORE THE CHIEF CLERKS IN EQUITY.

TO THE EDITOR OF "THE JURIST."

SIR,—It is to be hoped that in the plans for the new palace of justice provision may be made for the alterations which are inevitable in the practice before the chief clerks of the equity judges.

When the chief clerks were first appointed, it was, beyond a doubt, the intention of the Legislature that those functionaries should be in fact, what they are in name, mere clerks of the judges, discharging ministerial functions, and those of a subordinate nature, requiring, at the most, some knowledge of the practice of the Court, a general acquaintance with matters of business, and some idea of accounts. Hence they were selected from the members of that branch of the profession, whose best qualifications are to be good men of business, and apt in the practice of the various tribunals. What, however, has taken place is this. What is called the "jurisdiction in chambers," has from time to time been so extended by various orders of the Court, and by decisions of the judges, that at the present time the chief clerks have ceased to be what their name implies, and have become, in fact, a series of tribunals of first instance, having a sphere of action almost, if not quite, as wide as the Judges themselves, and dealing with matters involving not only intricate and disputed questions of fact, but equally intricate and disputed questions of law. Now, assuming that the judges, misnamed chief clerks, are

competent to the work—though how men specially educated for one duty, became, by the mere appointment to office, competent to another duty, is a question not without difficulty in the way of its solution, but into which I do not now propose to enter—there is nothing calling for complaint in this wholesale formation of new tribunals which has taken place; provided always, that those tribunals work well, and administer something at all events, approaching the law of the land. This proviso, however, involves precisely the matter in which the new tribunals are found wanting; and the defect arises in this way.

Wherever there are tribunals, unless society is in a state of almost patriarchal simplicity, there must be advocates, and to some extent, as the advocates are, so will the Court be. Of course good advocacy will not make an ignorant judge learned. We need not go back to historical periods to prove that. But if the advocates have, as a body, a sound knowledge of the laws they profess to expound, a Court, however incompetent, can scarcely be always going hopelessly wrong. Every chief clerk is now a tribunal, and before each chief clerk there are practising advocates. These advocates are sometimes solicitors, more often solicitors' clerks. Against each of these classes of gentlemen, the inferior equally as the superior, as regards their general information on professional matters, as a class, nothing is to be said. But both classes are, of necessity, not educated for, or versed in, and are, therefore, not fitted for, the discussion of points of law. Besides, the solicitor has his clients to see, his appointment—probably in all parts of town, occasionally out of town—to keep, his letters to write, and the general business of his office to superintend. The clerk, with some of the same duties, has also the minor details of practice to employ his attention. Neither master nor clerk has time to devote to the reading of reports, to the consulting of treatises, and to the comparison of authorities. If they do so, or attempt to do so, it is only by neglecting their own proper business. Indeed, every barrister knows by experience that the worst got up cases came from those clients who inflict upon him regmarole observations, supposed to contain a resumé of cases to the point. The great body of solicitors and their clerks, however, do not attempt to qualify themselves to discuss such points of unfamiliar law as constantly arise before the chief clerks, and hence it almost invariably happens, that matters are discussed and decided in chambers by the light of nature. If this were all, it might perhaps be said that whatever was the difficulty into which legal advisers were plunged by such a state of things, substantial justice was, no doubt, done in each case. What "substantial justice" is, and wherein it differs from other justice, and how that can be said to be justice at all which offends the law, are questions into which it is needless now to enter, although one cannot but recommend them to the consideration of many persons, some of them high in judicial office, who, if one may venture to judge, consider substantial justice altogether different from justice pure and simple, and indeed a very superior article to the latter. But the method of advocacy, and the mode of decision by the chief clerks, does not in its effects end with the individual cases decided. With an Englishman's love of precedent, the chief clerk who has wrongly decided a point of law, carefully registers his decision in his mind, and judiciously applies it the next time the same or a similar state of circumstances comes before him. This it happens, that as time goes on, there is growing up in chambers a code of law, which may be better or may be worse than, but which to a certainty is altogether different from, the code of law administered in the recognised courts of the country. And, as another

peculiarity, this code rests wholly in the breasts of the chief clerks themselves, and is unknown to those upon whom falls, by the practice of the profession, the duty of advising in matters of law.

In this way, by the course of decision in chambers, the chief clerks of one of the Vice-Chancellors have overruled a decision of Lord Eldon's, which has been upheld by the Vice-Chancellor Wood, and enforced in the judgment of a noble lord in deciding a case in the House of Lords. The same functionaries have also virtually set aside the rules established for the protection of married women having an interest in funds in court, and have actually directed a payment, which, in effect, was a payment to the husband, in a case where a married woman filed her bill, praying for a settlement of a fund in court, and that without any examination whatever of the lady.

Now, it is just possible to have too much of a good thing, and I venture to think that before long this dual system of law will cease to be regarded as an unmixed blessing. When that time arrives, the system of sittings in chambers must, in some way, be altered, and the services, if not of competent judges, at least of properly trained advocates, secured. It will then be found, probably, that the accommodation, now sufficient for judges' chambers in equity, will be insufficient for the altered state of things; and—that we may not be driven to alter and patch our palace of justice before it is well finished—it is desirable that in its plans some allowance should be made for extension in this respect.

Yours faithfully,

Feb. 28, 1866.

B.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, Feb. 23.

SALE OF LAND BY AUCTION BILL.

On the motion for going into committee on this bill, Lord *St. Leonards* made a short statement explanatory of its objects and provisions. It was introduced for the purpose chiefly of putting an end to the conflict between law and equity, law holding that every appointment of a puffer vitiated the sale, whereas equity, on the contrary, recognised the now almost universal practice of appointing a puffer, so far as this was necessary to prevent the estate from being sacrificed. The bill did not introduce any novelty; it was intended rather to conform the strict letter of the law to the existing practice, and to give protection, as far as possible, both to the owner and bona fide bidder.

Lord *Romilly* remarked, that although no one could doubt the importance of the measure under consideration, yet he was of opinion that it did not go far enough. He was at a loss to understand why his noble and learned friend had confined his bill to the regulation of auctions of land. He ventured to say that not one reason could be advanced in support of this bill, with reference to sales of land by auction, which could not be advanced with far greater force in support of a similar bill respecting sales of personal property. The number of sales of the latter description was far greater, and the lots were more numerous. Sales of pictures, ships, reversionary interests in stocks, large quantities of goods in bulk, and sales of plant and machinery, were continually occurring, and realised a very large amount. But the law regulating both classes of sale at present was, he presumed, the same; and it would be a matter for regret if the law were altered in one and not in the other. It had become his duty quite lately to order the sale in the Court of Chancery of a large factory, with the machinery, and it was sold in two lots, one the freehold of the factory, and the other the plant and machinery. If the bill under consideration passed into law, their Lordships would observe that part of the factory would be sold in accordance with one law, and the plant and machinery under another. If the object sought were to pre-

vent bidders at auctions from being induced to offer a higher price than the thing was worth, such an advantage was required in no instance so much as in sales of personal property by auction. In case of sales of land, the buyers generally employed an agent to bid on their behalf, and this arrangement was attended by this benefit, that an agent was never carried away by his feelings, but acted merely upon the instructions which were given him. In other cases, however, buyers were continually influenced by their feelings. It was a common thing in sales of farming stock to hold a luncheon before the sale, and the bidders were consequently often in a state of semi-intoxication. This was a great evil, and one which ought undoubtedly to be got rid of. The bill, therefore, only dealt piecemeal with a subject which ought to be treated as a whole, and he had intended suggesting to his noble and learned friend that he should postpone the committee upon the bill, as they were yet at the commencement of the session, and, after framing it anew, to meet the necessities of these cases, to proceed with it again at a later period. Another serious objection to the measure was, that it was a piece of class legislation. The upper classes were those most interested in land, and while laying down principles for the protection of their interests, they were neglecting those of the remainder of the community. He did not, however, intend to take any further step, and would leave the matter in the hands of his noble and learned friend. He had given notice of some amendments on the bill as at present framed. It had been found by long experience, that in sales by order from the chambers in the Court of Chancery, that the auctioneer ought to be allowed as little latitude as possible. An auctioneer should not be permitted to make a declaration, but ought to be compelled to state everything in writing. A person frequently came into court with ten to fifteen witnesses, who swore in their evidence that the auctioneer had not stated that there was a reserved bidding; that they were in the room the whole time of auction, and that if he had stated it they must have heard it. The auctioneer, on the other hand, would bring two or three persons who would say that they heard such a statement made, and the decision that the Court was consequently compelled to arrive at was, that a declaration had been made, but that it had been made in such a manner as not to be audible to one-half of those present. He wished, therefore, to have all these matters entered upon the particulars of the sale. He did not understand from the bill before their Lordships, whether his noble and learned friend intended the non-performance on the part of the auctioneer to constitute invalidity in the sale, or whether he intended the directions to be complied with or not, at the pleasure of the auctioneer. His noble and learned friend's measure also provided that property purchased by illegal bidding should be sold to the last bona fide bidder, supposing he were willing to complete the purchase, but such a condition would frequently lead to properties being sold below their value; and such a result would bear especially hard upon wards and minors, who ought not to be made responsible for the accidental omissions of the person employed to bid, or for the culpability of the auctioneer. The only other suggestion he had to make was, that a clause should be introduced, putting an end to the open biddings in the Court of Chancery.

The House then went into committee.

Clauses 1, 2, and 3 were agreed to.

On clause 4,

The Lord Chancellor objected to the clause, because it gave to the public a security which was only apparent and not real.

After some further conversation across the table, the clause as amended was agreed to.

Some verbal alterations having been made in clause 5, this clause was also agreed to.

On clause 6,

Lord *Romilly* moved the insertion of words for the purpose, as we understood, of extending the operation of the bill to sales other than those of land.

The Earl of *Derby* apprehended such an amendment was entirely adverse to the principle of the bill. His noble and learned friend would therefore have no alternative but to withdraw it.

Earl *Stanhope* trusted, if this bill were withdrawn, they might still have the benefit of legislation on the subject.

The Lord Chancellor observed that, before the bill went

into committee, his noble and learned friend had stated some objections to the principle of the bill. It did not go far enough, and applied only to auctions of landed property. No one had more experience on this subject than his noble and learned friend as Master of the Rolls. He, therefore, hoped his noble and learned friend would introduce a measure to embrace the objects he had indicated.

Lord Romilly said, if this committee were adjourned for a short period, he would endeavour to frame clauses with that view.

The House then resumed.

HOUSE OF COMMONS.—Thursday, Feb. 22.

PETTY JURIES IN IRELAND.

Mr. Lawson gave notice that on Monday he would move for leave to introduce a bill to consolidate and amend the law relating to petty juries in Ireland.

WATERWORKS BILLS.

In reply to a question from Mr. Ferrand, Mr. Milner Gibson said he was not aware that the Secretary of State had made any promise in 1864 to insert stringent clauses in future waterworks bills. In the beginning of last session his right hon. friend stated that the draft of the Waterworks Bill was prepared. He brought in that bill himself, and it was referred to a select committee. At the conclusion of the inquiry, the committee stated the session was too far advanced to hope for any satisfactory legislation on the subject; but they recommend that a bill should be brought in this session. The bill was then being prepared, and he hoped it would shortly be introduced.

WEIGHTS AND MEASURES.

Mr. Locke asked whether it was the intention of her Majesty's Government to introduce any bill into Parliament during the present session to amend the law relating to weights and measures.

Mr. Childers said it was the intention of the Government to introduce a bill this session on the subject. The special object of the bill would be to transfer to the department of the Board of Trade all the duties at present imposed by various acts of Parliament on the Controller-General of the Exchequer, and to place on a more satisfactory footing the custody of our standards.

In reply to Sir A. Agnew,

Mr. Childers said it would have nothing to do with the coinage.

BOOK RECEIVED.

A Treatise on the Locus Standi of Petitioners against Private Bills in Parliament. By James Melior Smethurst, Esq., of Trinity College, Cambridge, M.A., and of the Inner Temple, Barrister-at-Law. 12mo., pp. 122.—Stevens & Haynes.

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By order,

FITZROY KELLY, Chairman.

Beuchers' Reading-room, Lincoln's-inn,
February 17, 1866.

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OBJECTS OF THE COMPANY.

The Imperial Land Company of Marseilles (which has been nearly twelve months in course of organisation) is established with a view of purchasing and acquiring land and property in the important city of Marseilles, the resale of the same, and the acquisition of concessions and privileges connected with the development and improvements of the city and port.

In furtherance of these objects, and after long and careful investigation, various properties have been purchased in the best portions of the city, and where the progress of the improvements gives assurance of profitable results.

PROPERTIES ACQUIRED.

The properties which the Company have acquired are as follows:—

1. The Joliette property, comprising about 2,244,000 square feet of building land, exclusive of streets.
2. The Rue Imperiale property, consisting of about 98,000 square feet.
3. The Catalans property, consisting of the Hotel, the Imperial Club, Baths, houses, and building plots, in all about 2,800,000 square feet.
4. The Prado property, consisting of building plots of about 284,000 square feet.

It will be seen, on reference to the map, that the Company's purchases comprise the land to the north of the town as well as those to the south, with a large extent of seaboard; making a total of about 4,900,000 square feet.

MARSEILLES, PROGRESS OF.

Marseilles, both in population and wealth the first maritime city in France, contains a dense population of more than 300,000 souls. During the past year 18,000 vessels, with a tonnage of upwards of 3,000,000 tons, entered and left the harbour. Marseilles commands the commerce of the Mediterranean, engrosses nearly the whole trade with Algeria, and is the packet station for the Peninsular and Oriental Steam Company, the Messageries Impériales, and other steam-packet companies trading with all parts of the world. It possesses commodious docks and warehouses, and, by railway, is in direct communication with all parts of France.

The old harbour having been found inadequate for the rapidly extending commerce of the place, the new Harbour of La Joliette, covering an area of 68 acres, was constructed, and is constantly crowded with shipping. It is surrounded by broad quays, with stately buildings on the north side, and a new town is rising rapidly in its immediate vicinity. Since 1860 three other basins have been constructed, named Du Lazaret, d'Arène, and Napoleon, which will double the harbour accommodation of Marseilles.

THE EMPEROR'S INTEREST IN MARSEILLES.

It is well known, that his Majesty the Emperor of the French takes deep interest in the welfare and prosperity of Marseilles, and the Directors have strong reasons to believe that his Majesty's gracious and special protection may be depended upon to aid any enterprise having (like the present Company) the object of developing the resources of the city, and accordingly application is intended forthwith to be made by the Directors to obtain the valuable concession for razing the Fort St. Nicholas, and to make the new Catalans Port.

RUE IMPERIALE.

By the construction of the Rue Imperiale, which is 80 feet wide, and lined by important buildings, a direct communication has been effected between the Rue Canebière, the Exchange, the Ancien Basin, or old Harbour, and the new basins or docks above mentioned. This has caused the demolition of large blocks of houses densely occupied, which circumstance, together with the previous deficiency of house accommodation, renders the construction of new buildings absolutely necessary for commercial and residential purposes, and causes an eager demand for vacant plots of building land.

JOLIETTE PROPERTY ACQUIRED.

In this quarter of the town, where the commercial requirements of the growing population are so great, the Company has secured about 57 acres of freehold building land, exclusive of streets, and this under exceptionally favourable circumstances, both as respects situation and terms of payment.

RUE IMPERIALE PROPERTY ACQUIRED.

More than 98,000 square feet of this land are in the Rue Imperiale—the finest street in Marseilles. The remainder is situated in the Quartier de la Joliette, commencing at the Port of La Joliette, and extending the whole length of the docks, the Basin d'Arène, the Port Napoleon, and terminating at the Basin Radoub. These lands are traversed by streets from forty to fifty feet wide, in connection with the Rue Imperiale by the Boulevard Maritime, and are surrounded by an industrious and thriving population.

TERM OF PURCHASE.

The land will be handed over to the Company completely levelled, with all the streets and footpaths paved, drainage complete, gas laid on, and provision made for the supply of water to the topmost stories.

As by the conditions of the treaty for the acquisition of the Joliette estate, it is stipulated that six years should be given, by which time the estate is to be covered with houses; the option is reserved to the Company for the same period, during which it may elect either to pay the purchase money in one sum, or to make an annual payment of equal instalments, extending over a period of thirty years, with a fixed rate of interest and sinking fund.

PROFESSOR DONALDSON'S REPORT.

Before the treaty for this portion of the property was concluded the purchasers secured the services of Professor Donaldson (the President of the Institute of British Architects), to personally investigate the operations in progress at Marseilles, and the character and value of the sites. A copy of his report accompanies the prospectus.

CATALANS PROPERTY ACQUIRED.

The Catalans Properties are in the immediate neighbourhood of the marine residence of the Emperor, and command a frontage to the sea of about a mile in length. They are admirably situated both for business premises and private villas.

BUILDINGS NOW ON CATALANS ESTATE.

Many first-class houses are already erected; a magnificent hotel (now open), having 140 rooms; and the Imperial Club (now in course of construction), of noble architectural elevation, surrounded with terraces and gardens, all laid out under the Government plan. There is an extensive bathing establishment, often frequented by more than 500 bathers daily.

This district will undergo a radical improvement when Fort St. Nicholas, which separates the Catalan property from the centre of the town, shall have been demolished, a new port constructed, and additional streets made, so as to render complete the facilities for communication between the old and new portions of the town.

The municipality of the town of Marseilles engage, at their own expense, to lay down gas, make macadamized roads, and ensure a proper water supply for the houses.

There are in this quarter about four miles of streets from 40 to 50 feet in width, which have been recently opened and lighted with gas, and the Boulevard la Corderie (72 feet in width, and lately opened for traffic) forms a continuation of the splendid promenade of the Prado. The district communicates with the Quai de Rive Neuve, the centre of the old port and of the commerce of the town, by the Boulevard l'Empereur. All these important facts furnish assurances of great success, and there can be no doubt that this portion of the Company's properties will be sold at a price which will yield a very large profit.

THE PRADO PROPERTY.

The Prado Lands are near to the Southern Railway Station, in an admirable position, and well adapted for the establishment of warehouses, shops, &c.

With respect to the value and prospects of these properties, a report by Mr. P. Borda, the well-known engineer, of Marseilles, accompanies this prospectus, giving ample details thereon.

AMOUNT AND PERIOD OF PAYMENTS.

The total amount of purchases is 3,325,163*l.*; of this sum 2,668,640*l.* is payable by instalments spread over various dates, and extending in part to a period of fifty years, and only 656,523*l.* in cash, on taking over the estates, caution money being lodged in the meantime for the due observance of the Company's engagements. It is, therefore, expected that with the aid of the Company's borrowing powers, not more than 10*l.* per share will be required on those shares not fully paid up on allotment. Thus, with a comparatively small amount of capital, the shareholders have the advantage of profit derivable from dealing with a very large extent of property.

JOLIETTE PROPERTY RESOLD.

As evidence of the value of the purchases, the Directors have the satisfaction to announce that they have already concluded arrangements with an Association of Builders at Marseilles to transfer to them one of the properties (the Joliette property) at a profit of about 600,000*l.*, such property and profits to be paid for by annuities and sinking fund over a period of thirty years, with option on their part to pay for the whole at any time during five years, with an obligation on the part of the contractors to deposit a sum of four millions of francs (160,000*l.*) as caution money, at fixed periods (the first instalment of which was paid on the execution of the contract), and also to cover the property with buildings within a period of five years at their own cost.

The shareholders will have the benefit of this contract, and from October, 1867, will receive the income derivable from this contract, viz. the difference between the annuities to be paid and received by the Company, and this income, joined to the existing revenue from the Catalans estate, as well as to the anticipated profit on further sales during that period, will, it is estimated, not only enable the Directors to continue the payment of the interest at 10 per cent. per annum, but enable them to declare periodical bonuses on the capital called up.

As to the Catalan property, having regard to its important position, the command it has of the sea-board, the facilities it presents for construction of the new port, and its general adaptability for the formation of streets, shops, and private villas, a large and remunerative return may also be anticipated.

ESTIMATED PROFIT OF THE CATALAN ESTATE.

On reference to Mr. Borda's Report, it will be seen, that when the various improvements which have been suggested have been completed, and the Catalan property fully developed, it is estimated to yield a gross profit of upwards of 50 per cent., and this within a period of three years, although the estimates have been based on the more extended period of five years, and that when the Fort St. Nicholas is removed, and the new port completed, this profit will be trebled.

MINIMUM INTEREST, TEN PER CENT.

As the first payments of annuities and rent under the arrangements entered into with regard to the Joliette property do not commence until the 1st October, 1867, and become payable only in the subsequent half-year, viz. the 1st April, 1868, the Directors have decided to pay interest at the rate of 10 per cent. per annum for two years, from March, 1866, on the capital called up, and for which four interest warrants will be attached to the share certificates at the time of issue (which will be charged to land purchase account). After that date the revenue from the Joliette lands, the rentals from the other properties, and profits on further sales, will be applicable for dividend or bonuses.

PAYMENTS OF SHARES IN FULL ALLOWED.

As some shareholders may prefer to pay up the shares in full, rather than have a larger number subject to calls, application may be made for shares to be fully paid up on allotment. Four half-yearly interest warrants, at the rate of 10 per cent. per annum, will likewise be attached to these share certificates. In the allotment of shares preference will be given to these applications, but the number so allotted will not exceed 30,000 shares, and the Directors reserve to themselves the right, in their discretion, only to allot 60,000 shares in all on the present allotment.

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Copies of the architect's and engineer's reports on the lands purchased, and a map, showing their position, accompany the prospectus, which, with forms of application for shares, may be had of the brokers and solicitors; also of the Agra and Masterman's Bank (Limited), 35, Nicholas-lane; of the National Bank, Old Broad-street, London, and their branches; the National Bank of Liverpool, Liverpool; and of the Secretary, at the offices of the Credit Foncier and Mobilier of England (Limited), Nos. 17 and 18, Cornhill.

COPY OF MEMORANDUM OF ASSOCIATION.

1. The name of the Company is "The Imperial Land Company of Marseilles (Limited)."
2. The registered office of the Company is to be in England.
3. The objects for which the Company is established are:—
 - (1). The acquisition by purchase, leasing, or otherwise, of land in and near the City of Marseilles, in the empire of France, and the improvement, by building or otherwise, of land so purchased or acquired.
 - (2). The selling, leasing, transferring, or otherwise disposing or mortgaging of the lands, houses, and other buildings and works erected, executed, or otherwise acquired by the Company, in large or small portions, or altogether, and either before or after the same shall have been improved by building or otherwise, and on such terms as the Company shall think fit.
 - (3). The improvement of buildings already erected, either by adding to, enlarging, completing, or altering the same, or by substituting new houses and buildings.
 - (4). The investing of the capital of the Company in building on, or otherwise improving, or adding to, the marketable value of lands from time to time acquired by the Company, and the making, maintaining, and using all such works as the Company may think necessary or expedient for any of the purposes of the Company.
 - (5). The borrowing of money, and the issue of transferable or other bonds, or mortgage debentures, or any other securities founded or based upon all or any of the real or personal assets or credit of the Company.
 - (6). The transacting and doing of all such matters and things as shall be conducive or incidental to the above objects, or any of them, including the applying for and obtaining the incorporation of the Company in France.
4. The liability of the members is limited.
5. The capital of the Company is 1,000,000*l.*, divided into 80,000 shares of 20*l.* each.

FORM OF APPLICATION FOR SHARES.

To be paid up by instalments. To be left with the Bankers.

No. —.

To the Directors of the Imperial Land Company of Marseilles (Limited).

Gentlemen,—Having paid to your credit with [insert Bankers' Names], the sum of £—, being the deposit of 11. per share on — shares in the above Company, I request that you will allot me — shares of 20*l.* each in the Imperial Land Company of Marseilles (Limited), and I hereby undertake to accept the same, or any smaller number which you may allot to me, and to pay the calls thereon; and I agree to become a member of the Company, and request you to place my name on the register of members, in respect of the shares allotted to me.

I am, gentlemen, your obedient servant,

Name in full
Address in full
Profession
Usual signature
Date 1866

Or the following form for fully paid-up shares:—

FORM OF APPLICATION FOR SHARES.

For shares to be fully paid up on allotment. To be left with the Bankers.

No. —.

To the Directors of the Imperial Land Company of Marseilles (Limited).

Gentlemen,—Having paid to your credit with [insert Bankers' Names], the sum of £—, being the deposit of 11. per share on — shares in the above Company, I request that you will allot me — shares of 20*l.* each in the Imperial Land Company of Marseilles (Limited), and I hereby undertake to accept the same, or any smaller number which you may allot to me, and to pay the balance, 19*l.* per share, thereon; and I agree to become a member of the Company, and request you to place my name on the register of members, in respect of the shares allotted to me.

I am, gentlemen,

Your obedient servant,

Name in full
Address in full
Profession
Usual signature
Date 1866

THE IMPERIAL LAND COMPANY OF MARSEILLES (LIMITED).

NOTICE IS HEREBY GIVEN, that the Lists of Application for Shares in this Company will be closed at 4 o'clock on Wednesday next, the 7th instant, for London, and on Thursday next, the 8th instant, at 12 o'clock, for Country Applications.

By order,

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N O T I C E.

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THE JURIST.

LONDON, MARCH 10, 1866.

IN the earlier edition of *Smith's Leading Cases* (notes to *Spencer's case*), it was stated, that if a lease be made by indenture, in such a form as to create between the lessor and lessee an estoppel to deny that the lessor had a reversion, and the lessor conveyed all his interest, the disputed question arises, whether the assignee can sue the lessee or his assignee for breaches of covenant, in respect of which the lessor might have sued had there been no assignment (see 5th ed., notes to *Spencer's case*, p. 66); and that Parke, B., in *Goldsworth v. Knight* (11 M. & W. 337), expressed an opinion in the affirmative, and that there seemed to be no sound reason why the assignee of a reversion should not establish his title by way of estoppel; that an estoppel did not necessarily involve a falsehood; that, on the contrary, facts were ascertained through the medium of an estoppel, without reference to the question whether really true or false; and that it would be sheer fallacy to assume that a fact established by estoppel has, therefore, no real existence, and that, for judicial purposes, it ought to be dealt with as if it really existed. And in the fifth edition it was announced that the question had at length been decided in the affirmative, by the unanimous judgments of the Courts of Exchequer and Exchequer Chamber, in the case of *Cuthbertson v. Irving* (4 H. & Norm. 742; in error, 6 H. & Norm. 135; S. C., 5 Jur., N. S., part 1, p. 740; 6 Jur., N. S., part 1, p. 1211).

The recent case of *Saunders v. Merryweather* (5 H. & C. 908) may now be added. In *Cuthbertson v. Irving* the action was by the assignee of the lessor against the lessee on a covenant to repair. The lessor had no legal reversion, either at the time of the lease or at the time of the assignment to the plaintiff. The lease did not disclose the fact that the lessor's estate was in mortgage; the covenants declared on were stated to be with the lessor, his heirs and assigns; and at the time of the execution of the lease, the defendant was in possession under a former lease, and had continued in possession during the whole term. During the term the lessor sold and conveyed all his interest in the premises to the plaintiff; the deed of assignment, however, recited the mortgage, and then shewed on the face of it that the lessor was without legal title. The Court held, that an estate in reversion by estoppel was created by the lease, and conveyed to the plaintiff by the assignment, or, as is put in the note to the case, 5 H. & C. 909, the Court held "that the defendant was estopped from disputing the validity of the lease on the ground that the lessor had no legal interest or title in the premises, and that the estoppel continued in favour of the plaintiff, notwithstanding the assignment to him shewed that the lessor had no legal title." The Court, however, observed, that it would have been otherwise if the want of title appeared on the face of the lease itself.

It will have been observed, that in the notes to *Smith's Leading Cases* it is said, that it would be a

sheer fallacy to assume, that a fact established by estoppel has no real existence, and that, for judicial purposes, it ought to be dealt with as if it really existed; and thus that the estoppel does not merely, according to Lord Coke's definition, "close or stop the mouth" against alleging the truth, but also establishes as a reality for judicial purposes the fiction it asserts, and is ever after to be dealt with, at least between the same parties and their privies, as an actual fact, even though the subsequent deeds expressly shew it to be a fiction, and not a fact. And in *Cuthbertson v. Irving*, Martin, B., in delivering the judgment of the Court, expressed his satisfaction in thus perpetuating the estoppel, and by means of it holding the lessee to his covenants, and treating the legal reversion as an existing fact, of which the purchaser and assignee of the lessor's estate might avail himself to sue. "This state of the law," said the learned judge, "in reality tends to maintain right and justice, and the enforcement of the contracts which men enter into with each other (one of the great objects of all law); for so long as a lessee enjoys everything which his lease purports to grant, how does it concern him what the title of the lessor,—that is, the heir or assignee of his lessor—really is? All that is required of him is, that having received the full consideration for the contract he has entered into, he should on his part perform it."

In *Saunders v. Merryweather*, however, the want of title appeared on the deeds; and, therefore, though the assignee of the term had come in under a deed of assignment, which appeared to treat the equitable owner as lessor; and though the assignee of the term had entered into possession, and enjoyed the property, and paid the rent to the equitable owner; and though the intention of the parties was as manifest as it was in *Cuthbertson v. Irving*, yet the Court held, that there was no estoppel, as it appeared from the lease itself, in the first instance, what the true state of the title was, and also by reference to the lease, from the recitals in the deed of assignment under which the defendant claimed. That the Court was astute to discover, if possible, the means of carrying out, in this case also, the intention of the parties, though they were unable to do so, is evident from the observations made. Martin, B., during the argument, said, "In modern times the Courts endeavour to ascertain the intention of the parties, and to so construe the condition as to give effect to that intention;" and it will presently be seen that, irrespective of the question of estoppel, the same learned judge suggested a construction of the condition in the case before him, which would have had that effect, but which he felt to be too forced a construction to be adopted.

In order fully to understand the case of *Saunders v. Merryweather*, it is necessary to refer to the numerous and complicated deeds under which the respective parties to the action claimed. The summary of the learned reporters relieves us from all difficulty in this respect. The action was one of ejectment for forfeiture for assigning the term without license. Waive had a lease of a public-house from the corporation of Liverpool for a term of seventy-five years, from the 20th December, 1847, and by indenture of that date he

mortgaged the premises to Tyrer; and by indenture of the 26th April, 1849, to which Tyrer and Waine both were parties, the premises were leased to Johnson for twenty-one years from the 1st May, 1849. That deed contained a proviso for re-entry by Tyrer and Waine, their assigns, &c., if the lessee should assign or underlet without Waine's approval in writing. The mortgage to Tyrer, after several mesne assignments, was assigned, by indenture of the 28th November, 1859, to the plaintiff Saunders. The lease to Johnson, after several mesne assignments, to which Waine was a party, by indenture of the 7th February, 1861, to which Waine was a party, vested in Reid; then, by indenture of the 4th October, 1864, to which Saunders and Waine were both parties (which indenture recited the lease to Johnson), the lease was assigned to Merryweather. This indenture contained a covenant by Merryweather not to assign or underlet without Waine's consent in writing; and the proviso followed, that, if he did so, "it should be lawful for the said Waine, his executors, &c., in and upon the said premises, and any part thereof, in the name of the whole, to re-enter, and the same, and every part thereof, with the appurtenances, to repossess and enjoy, as in his and their former estate; anything herein contained to the contrary notwithstanding." Merryweather entered under this deed into possession of the premises, and paid rent to Waine; and then, by indenture of the 13th January, 1865, he assigned the lease to Anne Snowden without Waine's consent. Anne Snowden afterwards married the defendant Kelly, having previously by a marriage settlement assigned the lease to trustees, who were the other defendants.

The Court, consisting of Pollock, C. B., and Martin and Channell, BB., unanimously held that there was no estoppel, and no mode of dealing with the facts, so as to enforce the manifest intention of the parties. In giving judgment, Baron Martin said he was clearly of opinion that there was no estoppel. The indenture of the 4th October, 1864, recited the indenture of the 26th April, 1849, by which the real truth appeared, and with regard to the argument based on intention, that the insertion of this condition shewed that the intention of the parties was, that Merryweather should not assign the lease without the consent of Waine, Martin, B., said "No doubt that is true; and if I could carry out that intention by giving any reasonable construction to the language of the condition, I should be inclined to do so. If the rules of law permitted, that might be done by construing this proviso, not as a condition, but as a reassignment of the term by Merryweather to Waine, to take effect in futuro, if the former demised, assigned, or in any parted with the possession of the premises without the license and consent of Waine. But I think that such a construction cannot be put on the proviso, and that we ought not to strain the language so as to make it operate in a manner different from what the words express. It seems to me, therefore, that the condition fails, because the right of re-entry is reserved to the party to the lease who is not the legal owner of the reversion." And Mr. Baron Channell said, "It is scarcely necessary to add anything to the observations of my Brother Martin, but I agree

with him, that when the recital in the indenture of the 4th October, 1864, is looked at, there is no estoppel, but the real fact appears by reference to the indenture of the 26th April, 1849. I also think we could not construe this proviso as an assignment in futuro to Waine without straining its language, and giving it an effect different from its actual meaning; there is, therefore, no ground on which the plaintiff Waine can recover in this ejection. With regard to Saunders, who is the legal owner of the reversion, no right of entry is reserved to him."

THE LONDON CORPORATION GAS BILL.

WE refer to the debate on this bill, for the purpose of protesting against Lord Cranbourne's doctrine, that when an agreement has been made between the Legislature and a company or set of adventurers, the Legislature is bound for ever, although the adventurers may have broken their engagements. The doctrine had in fact no application to the case before the House, because, as Sir George Grey feebly endeavoured to shew, the Metropolis Gas Act did not affect to bind Parliament to abstain from interfering with the monopoly of the existing companies. The companies had already established themselves, and made their outlay; they did not spend a shilling on the faith of any exclusive privileges given by the act. It was purely a measure of police regulation, intended to keep the peace between contending companies, and to protect the pavements from unnecessary violation, and the consumers of gas from more than a liberal maximum of extortion and imposition. How it has operated among the companies we do not care to inquire. It has, probably, been beneficial to the pavements, but as a protection to consumers it is found to be an utter failure.

It is a mistake to represent Parliament as a contracting party, in the ordinary sense of that expression, when it grants privileges to those who seek its special interference. All that the adventurers can claim is a due consideration of the expenditure they have made and the risk they have incurred, when it is proposed to expose them to competition. The ethics of parliamentary enjoyment involve considerations very different from those which determine the rights and duties arising out of private contracts, and are yet to be established on sound principles. But it is clear that Parliament ought never to consider itself precluded from revising and undoing any arrangement, which, if fairly considered at the time of making it, would have appeared to be prejudicial to the public interests—interests seldom sufficiently represented or protected (as the companies' whip on Tuesday shewed); and it is not too much to imply in every legislative concession, as some little guarantee of good faith on the part of the undertakers, a condition that the grant may be revoked if it shall appear to have been improvident. Good faith in dealing with companies, which have nothing to be kicked and nothing to be damned, and act accordingly—means something very different from good faith between individuals.

The Queen has been pleased to appoint Walter Morgan, Esq., now a Judge of the High Court of Judicature at Fort William, in Bengal, to be Chief Justice of the High Court for the North-western Provinces of the Presidency of Fort William; and Alexander Ross, Esq., William Edwards, Esq., William Roberts, Esq., and Francis Boyle Pearson, Esq., all of the Bengal Civil Service, and Charles Arthur Turner, Esq., Barrister-at-Law, to be Judges of the said High Court for the North-western Provinces.

Imperial Parliament.

HOUSE OF LORDS.—Monday, March 5.

LAW OF EVIDENCE AMENDMENT BILL.

The Lord Chancellor, in moving the second reading of this bill, stated that he had introduced it at the suggestion of Sir James Wilde. At present parties to suits were allowed to be witnesses in their own cases, except in the instances of suits in regard to adultery, and of actions for breach of promise of marriage. He proposed to abolish the exception in the latter case altogether. He did not think that persons ought to be rendered liable to be asked whether they had or had not committed adultery, since the object of adducing evidence was to get at the truth; and he did not think this end would be attained by placing persons in a position in which they might think that it was less wrong to commit perjury than to confess the commission of adultery. He did not, therefore, propose that persons should be compelled to give evidence in such cases. But, on the other hand, he thought that a wife or a husband should be allowed to give evidence in explanation of his or her conduct if he or she desired. At present a husband or wife was allowed to give evidence on any issues of cruelty or desertion which might arise in the course of a suit for divorce or judicial separation instituted by the wife. But it was most inconvenient to allow a witness to be examined on one or more points, and to exclude his or her evidence on another. What he proposed, therefore, was, to render both parties competent, but not compellable, to give evidence in all matrimonial causes, on the issue of adultery as well as on others. It might be said that this would be unfair, because if parties who were thus rendered competent to give evidence did not offer themselves for examination, the inference that they had committed adultery would be irresistible. But he did not think that this was an objection to the measure; because the object they all had in view was the attainment of truth; and if persons really had committed adultery, and therefore could not give evidence, no injustice would be done by convicting them of it.

Lord Chelmsford said that a bill containing similar provisions to those embodied in the present bill was rejected by the House of Commons; and he was of opinion that it would be extremely dangerous to admit any relaxation in the present law of evidence on this subject. He thought that there would be no practical difference between permitting and compelling to give evidence. In every case the "may" would be the "must." If persons did not come forward and give evidence, the jury would be certain to infer their guilt; and knowing this, they would often be induced to commit perjury. At all events, a great temptation to commit that offence would thus be held out both to a guilty wife and to her paramour. In order to shew how strongly this inducement would act, he might refer to a case which had occurred just before he left the bar. An action for criminal conversation was brought against a gentleman who was a county magistrate. After a verdict had been given for the plaintiff in that case, the husband proceeded to the Ecclesiastical Court in order to obtain a divorce *a mensâ et thoro*. On that occasion the adulterer appeared and made a deposition that no adultery had been committed. On that an indictment for perjury was preferred against him. He (*Lord Chelmsford*) was retained for the defence, and it became a very serious matter for consideration how that defence should be conducted. It was clear that the defendant had no hope of obtaining an acquittal unless the wife would appear and swear that she had never committed adultery. The result was, that the wife did so appear as a witness; did swear as the defendant had done, and the latter was acquitted. The Divorce Court was established shortly afterwards. The husband went into that court. The adultery was clearly proved. A divorce was decreed, and almost the first act of his official life as Lord Chancellor was to remove the defendant from the commission of the peace. He, therefore, said, that if they relaxed the present rule, they would hold out to guilty persons a temptation to commit perjury which would be almost irresistible. The scandal of the Divorce Court was now very great, but the scandal would be greatly increased if the wife, the husband, and the co-respondent were allowed to give evidence, and were to be subject to cross-examination on all the events and details of

their lives. He was convinced that they would regret passing this bill, and he, therefore, trusted that they would refuse it a second reading. With respect to the other part of the bill, it was quite clear, that if the female plaintiff in an action for breach of promise were allowed to give evidence, her case would be proved with dangerous facility. It might be said that the defendant would also be allowed to tell his story; but all the sympathy would be on the side of the woman, and in nine cases out of ten her story would be believed, whether it was true or not. The result of passing this bill would be to convert all the actions which were at present brought as actions for seduction into actions for breach of promise of marriage. The woman would be sure to allege that she had yielded under a promise of marriage; and a jury before whom it was proved that she had been seduced by a defendant would look with so much severity on his conduct, that they would most likely give a verdict against him on the promise of marriage. Feeling so strongly as he did on this subject, he should move that this bill be read a second time that day six months.

Lord Taunton also opposed the bill, adducing against it the authority of the late Lord Denman, who said that he would never place a man in a position in which public opinion would sanction his committing perjury rather than betray a woman whom he had seduced.

The House divided on the question, that the bill be "now" read a second time, when there were—

For the second reading 29

Against 29

The Lord Chancellor said, that as the rule in cases of equality of voices was *presumptur pro negante*, the bill would not be read a second time.

The bill was then ordered to be read a second time that day six months.

DIVORCE AND MATRIMONIAL CAUSES BILL.

This bill was read a second time.

Tuesday, March 6.

DIVORCE AND MATRIMONIAL CAUSES BILL.

This bill passed through committee.

SAVINGS BANKS AND POST-OFFICE SAVINGS BANKS BILL.

This bill also passed through committee.

HOUSE OF COMMONS.—Tuesday, March 6.

LONDON (CITY) CORPORATION GAS BILL.

Mr. Crawford, in moving the second reading of this bill, said that in 1851 the Central Gas Consumers' Company entered into an arrangement with the city authorities, by which they bound themselves, that in the event of an act being obtained, the price of gas should be never more than 4s. per thousand feet, and it should be reduced to 3s. 6d., and subsequently to 3s., if the dividends enabled them to do so. Parliament gave its sanction to the bill. In 1858 and 1859 committees of the House of Commons investigated the subject, and the result was an act by which the whole gas supply was now regulated. The city was advised that the measure contemplated by the promoters would not affect them, and they took no part in the agitation on the subject; but after the bill became law, they found that the effect of it was to annul the understanding between themselves and the Central Gas Consumers' Company. The consequence was, that this company confederated with the other gas companies, and the price was immediately raised to 4s. 6d. per thousand feet, and the charge for the public lamps from 2l. 19s. 6d. in 1857 to 5l. 9s. 6d. The corporation now introduced a bill for manufacturing gas for the use of the city, and that was the bill now before the House. It was said to be irregular and improper for the corporation to undertake the sale of gas. But his answer was, that that principle had been admitted by Parliament, and in many cases throughout the country gas and water were supplied by the corporations to the inhabitants, and great advantages had been derived from the plan. He might be told that the act of 1860 was a settlement of the question; but surely it was competent for the House to reconsider what it had done at any time? The gas companies were bound by statute to make a report of the

state of their affairs as to capital, expenditure, division of profits, &c., and that report was presented to Parliament. The view which he took of the filing of these accounts was this—that they were intended to be examined by the House, and for the accounts so rendered the companies were to be held answerable. It was for that reason that he would venture to suggest that, in case of this bill being read a second time, the inquiry should be extended to the whole metropolis, so as to see whether the requirements of the act of 1860 had been complied with. He had examined into the accounts of two of the companies; the Central Gas Consumers' Company, in 1864, divided 10*l.* per cent. upon their capital, and also laid by a considerable amount. The gross profits of the company were 47,428*l.*; they divided 10*l.* per cent. on their capital, paid themselves a further sum of 11,741*l.* as arrears due upon former years, and carried to the next year's account a further sum of 17,017*l.* The Imperial Gas-light Company was possessed of a capital of 1,235,000*l.* They had also another item of capital which required some investigation, viz. 130,000*l.* of what were stated to be proprietors' 10*l.* per cent. bonds. But these bonds had in later years taken the place of capitalised profits. In 1864 the gross profits were 560,000*l.* On some portion of their capital they paid 20*l.* per cent., and they carried 42,000*l.* to their reserve fund. It was plain from this, that the Imperial Gas Company had actually realised a profit exceeding 10*l.* per cent. Another gas company had applied to the House of Commons for leave to make 300,000*l.*, which they had realised in profits, a part of their capital. He, therefore, moved that the bill be referred to a select committee.

Lord Cranborne said that he was a member of the committee which sat in 1860, and to which the question of the metropolitan gas companies was referred. He felt bound to say a few words on the subject, as the gentleman who had presided over the committee, Mr. Sotheron Estcourt, was not now a member of the House of Commons. He should first state that, in common with the majority of the inhabitants of London, he felt that the metropolitan gas companies were not treating the public fairly. But there was something more important than that the London gas companies should be compelled to act fairly, and that was the maintenance of the public faith of the House of Commons. It appeared to him to be a matter of supreme importance, that when, in the case of any commercial undertaking, the House of Commons made certain promises, and when, trusting to those promises, any persons took part in that undertaking, the pledges of the House should be kept with the most scrupulous and rigid good faith. The committee sat for a considerable part of the year 1860, and after much discussion it was resolved to divide the city into certain districts, each of which was to be lighted by one gas company. The committee also resolved that the profits of the shareholders in gas companies should be limited to 10*l.* per cent. per annum, and that back dividends could be paid up for six years. Any profit beyond this was to go to the public. The case relied on by Mr. Crawford was, that this regulation had been infringed by the shareholders of the gas companies, who had divided more than 10*l.* per cent. profit. Now, the committee had taken care that in case such a violation of the act should take place, the inhabitants of the metropolis could have recourse to a tribunal far more summary and more convenient than the House of Commons. A clause of the act provided, that in case a petition from twenty gas consumers in any district, stating that the company which supplied the gas to that district had violated their engagements, was presented to the Secretary of State for the Home Department, it should be competent for him to make inquiries into the matter, and then to make any changes in the boundary of the district to which the company supplied gas that he thought proper. Had the Corporation of London taken the course so plainly pointed out by the act? Obviously they had not; but, instead of appealing to the Home Secretary, they appealed to the House of Commons, and introduced the bill now under discussion. He moved that the bill be read a second time that day six months.

Mr. H. Adair seconded the amendment.

Sir G. Grey said that the noble Lord had stated very fairly the greater part of the clause, which, in effect, after assigning certain specified districts to each gas company, provided that, upon the application of certain persons, the Secretary of State should have power at the end of every

three years to sanction the introduction of another gas company in any of these districts. But the noble Lord had unintentionally misled the House, if he led them to believe that the act gave an absolute monopoly, even for three years, to these gas companies, without the power of interference by Parliament. It was stated at the end of the clause, that "no company other than the company to which such limits are assigned, or shall hereafter be assigned, shall supply gas for sale within the same limits unless authorised by Parliament." The act, therefore, expressly contemplated the interference of Parliament, and no breach of faith could be imputed to Parliament if a case were made out for the second reading of this bill. Another clause provided, that if complaint were made to the Secretary of State of the quantity or quality of the gas, he was to appoint a person to inquire into the matter. In one case, and one case only, a complaint had been made to him, and Dr. Letheby was appointed to inquire. His report fully sustained the complaint, and showed that the quality of the gas in the district was very inferior. The company was thereupon required to remedy that defect, and no other complaint having reached him, he presumed that the quality of the gas had improved. He was inclined to think that the best way would be to read the bill a second time, and to instruct the committee to which it would be referred to conduct a complete inquiry into the operation of the act of 1861. If it should appear, as the result of that inquiry, that the gas companies had fulfilled all the obligations they were bound to fulfil, and supplied gas sufficient in quantity and quality, and at a moderate and fair price, there would be no case for proceeding with this bill. If, on the other hand, the inquiry led to a different result, the bill might be allowed to proceed.

Mr. Roebuck thought that the very peculiar appearance of the House, which had, no doubt, been packed for the occasion, afforded proof of the statement, that the House itself was an unfit tribunal for dealing with matters of that kind. Hon. members had been applied to and taken by the button-hole; and all through whom? By the influence of the gas companies. He asked the House for its own honour to consider what it was doing, and whether it thought it was acting in the judicial capacity which became it in regard to a private bill. The hon. member for London had told them that he held a peculiar situation: that one tail of his coat was pulled by the city corporation, and the other by the gas companies. (Laughter). Ought they not to send that bill to the tribunal which the wisdom of Parliament had long since appointed for the consideration of private bill legislation, and not to attempt to dispose of it in that unseemly way.

The House then divided, when there voted—

For the amendment	198
Against it	219

Majority	26
--------------------	----

The bill was then read a second time.

Mr. Crawford moved that the bill be committed to a select committee of twelve members, of whom five shall be nominated by the Committee of Selection; and that it be an instruction to the committee to inquire into the operation and results of the Metropolitan Gas Act, 1860.

Mr. Roebuck said that there were several very large gasometers in the city, two being near the Temple; and, from the disastrous accident which took place some time ago on the south side of the river, he thought the committee ought to consider how far the existence of gasometers in the city was consistent with its safety.

Mr. Ayrton said that there was a bill before the House for the removal of the gasometers in the city, and that that bill would also be committed to the select committee.

The bill was then ordered to be referred to a select committee, with an instruction to them to inquire into the operation and results of the Metropolitan Gas Act, 1860.

THE INSURANCE DUTY.

Mr. Hubbard gave notice of his intention to move, after the Easter recess, a resolution to the effect, that fire insurance ought not to be taxed as a means of revenue.

COMMONS AND OPEN SPACES.

Mr. Couper gave notice, that on the 30th inst. he should move for leave to bring in a bill for the preservation and

improvement of commons in the neighbourhood of the metropolis, and for the protection thereof for the use of the public.

MARRIAGE LAW AMENDMENT.

Mr. *Chambers*, in moving for leave to bring in a bill to legalise marriage with a deceased wife's sister, proposed that the discussion should be postponed until the second reading.

Leave was given to bring in the bill.

CLERKS TO JUSTICES.

Mr. *Colville* obtained leave to bring in a bill to prevent clerks to justices in counties conducting the prosecution of any offender committed for trial by the justice or justices for whom he is acting as clerk.

Sir *G. Grey* had no objection to the introduction of the bill, but would, when it came on for its second reading, take the opportunity of making some remarks, which would enable the House to judge more thoroughly of the matter embraced in the measure of his hon. friend.

Leave was granted to bring in the bill.

BILL FOR CARRYING OUT EXECUTIONS IN PRISONS.

Mr. *Hibbert* asked leave to bring in a bill to permit capital punishments to be carried out, under certain regulations, within the interior of prisons. He said he would have been glad to have left this important subject to be dealt with by Government, had they shewn any intention of doing so.

Sir *G. Grey* stated that Government had received information from the colonies in regard to the working of the system referred to by his hon. friend, and he confessed that information had produced a great effect upon his own mind, and caused him to make known his approval of the principle of the change now proposed by his hon. friend. The commission had recommended the adoption of that principle, subject to certain regulations, and Government had prepared a bill which they had carefully considered. This bill proposed to give effect to the recommendations of the commission, and it was now in course of being revised previous to being introduced. It would be better to attend to the recommendations of the commission as a whole than to deal with the one point only referred to in the bill. When the hon. gentleman saw the bill of the Government, he would find that it accomplished his views with regard to carrying into effect executions within the walls of the gaols. As a leading member of the commission was a member of the other House, the bill would probably be introduced there, and, after being carefully considered, would come down, when more attention could be given to it than at present. He should be happy to see the bill of the hon. member, and therefore would offer no opposition to its introduction; but he hoped the second reading would not be pressed until the whole subject could be brought before the House.

Mr. *Gipin* entertained the opinion that strangling human beings for the purpose of illustrating the sacredness and the value of human life was a miserable bungle. If executions were made private, the strong argument of moral example urged by the advocates of capital punishment would be taken away. What an enlightened public opinion required—and would eventually obtain—was, the total abolition of capital punishment.

Mr. *W. Ewart* took a similar view.

Mr. *B. Carter* wished to correct the impression that the bill suggested private executions. The object was to remove from executions the exhibition of torture, which had been struck out of all other penal punishments in England long since. The bill of his hon. friend, if introduced, would provide a remedy at once for the objectionable system of public executions, in the event of the Government bill not being brought before the House time enough to pass during the present session.

The motion was then agreed to.

DIVORCE AND MATRIMONIAL CAUSES ACT.

Mr. *Chambers* obtained leave to bring in a bill to explain the act of the 20 & 21 Vict. c. 85, "To amend the Law relating to Divorce and Matrimonial Causes in England," and the Legitimacy Declaration Act, 1858. The object of the bill was to provide that in both cases matters of fact might be, at the desire of either of the suitors, determined by a jury.

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PART I.—POWERS OF ATTORNEY.

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THE JURIST.

LONDON, MARCH 17, 1866.

THE DEFECTS OF OUR JURY SYSTEM.

THE system of trial by jury is the very soul and essence of our common-law procedure, whether civil or criminal. So vital is it, that great judges, like Tindal, C. J., and great jurists, such as Coleridge, J., have laid it down, that our very rules of evidence, and our other rules of procedure, are in a great degree framed, so as to be adapted to the infirmities of the tribunal before which causes are tried. (Tindal, C. J., 8 Bing. 58; 9 Bing. 31; Coleridge, J., in *Wright v. Tatham*, 4 Bing. N. C. 501; *Rutzen v. Farr*, 4 Ad. & El. 561). And our rules of pleading, it is notorious, were framed in a great degree to simplify the issues to be tried, and to separate the law from the fact, in order to prevent the law from being decided by the *lays gents*, as our old lawyers were wont to call the jury. On the other hand, such is the *potency* of the tribunal *within* its lawful province—questions of fact—that notwithstanding its infirmity, in a legal and intellectual sense, it is necessarily well nigh absolute, and although, as Lord Mansfield elaborately explained long ago, new trials were very soon found necessary to mitigate the consequences of the infirmity of the tribunal. (*Bright v. Crip*, 4 Burr. 398); and it was there said, "There are numberless cases of false verdicts, without corruption or bad intention of the jurors; they may have heard too much of the matter before trial; they may have imbibed prejudices; the cause may be intricate," &c. Yet it was there, and has ever since been, laid down, that a new trial cannot be granted as against evidence, unless the Court can *clearly see* that the verdict was wrong (*Deane v. Harrison*, 13 Price, 226); and when there is a balance of evidence, and the question has turned on the credit due to witnesses, and the result of contradictory testimony, which is their peculiar province to decide, the Court can hardly interpret (*Carstairs v. Stein*, 4 Mau. & S. 99); and, indeed, there are many cases in which a jury may determine on their own general knowledge of matters of business, contrary to a whole body of positive testimony (*Rushforth v. Hadfield*, 7 East, 224)—a principle repeatedly entertained of late years in cases where the Courts have held that they would not grant new trials where, on matters mercantile or agricultural, the jury have found on their own knowledge without express evidence. And it is no misdirection if the judge refer the jury to their own knowledge even of particular facts which have been proved, as matter of illustration (*Reg. v. Sutton*, 4 Mau. & S. 532); and thus they may judge of the meaning of mercantile phrases (*Lucas v. Gravey*, 7 Taunt. 164), and all matters of a mercantile nature (*Carruthers v. Shedden*, 6 Taunt. 17; *Mownt v. Jenkins*, 8 Bing. 108); or the course of business (*Freecott v. Flynn*, 9 Bing. 22; *Belcher v. Prittie*, 10 Bing. 414); so that, practically, in a great majority of cases, their decision is final, and in criminal cases we

all know it is absolutely so, so far at least as regular legal procedure is concerned.

This being so, it will be seen that it is not possible to over-rate the importance of everything which relates to the constitution of the jury, whether with reference to the constitution or qualifications of the general body of jurors, or the summoning of the jurors on the general jury panels, or the empannelling of the particular jury lists, the jury panels, or the *juries*.

Accordingly it has, in fact, been deemed of such vast importance by the law, that every part of it was regulated and protected from the earliest times, both by the most careful precautions at common law, and by the most numerous and minute provisions by statute. Nothing in it (as a great lawyer observed) was left to chance; every part of it was most carefully regulated (Tindal, C. J., *arguendo* in *Reg. v. Dolby*, 2 B. & Cr. 104); and the statutable enactments on all the three heads above mentioned are innumerable.

These statutes, now for the most part consolidated in what is called the Jury Act, 6 Geo. 4, c. 50, reciting that the laws relative to the qualification and summoning of jurors, and the formation of juries, are very numerous and complicated; and it is expedient to consolidate and simplify the same, and to increase the number of persons qualified to serve on juries, and to alter the mode of striking special juries, &c., and proceeded to insert a number of provisions on all other heads.

First, as to the *qualifications of jurors*, it was enacted, that "every man between the ages of twenty-one and sixty, residing in any county in England, who shall have 10*l.* a year freehold or copyhold, or 20*l.* a year on lands on lease, or who, *being a householder, shall be rated to the poor rate*" (on a value in Middlesex of 30*l.*, or in any other county 20*l.* a year, or who shall *occupy* a house containing not less than fifteen windows, i. e. whether then rated or not), "shall be qualified and *liable to serve on juries*." Now, to cut a long story short, we might stop here to state, that the execution of the act, at the very basis or beginning of the whole process—the construction of the jury lists,—having been left to the parish officers—they have construed the act in the easiest and simplest way, for *their* purpose, by reading it as if it were merely provided, that all persons rated to the poor should be deemed qualified and liable to serve on juries; and, as, *prima facie* all *occupiers* are rated, they have, in fact, simply made the poor rate lists the jury lists; and as there was no payment for revision, nor any real effective operative provision for the revision of the jury lists, the *same* poor rate list has, at all events in a great many parishes, been taken as the jury list year after year, without any attempt at revision, including, of course, the names of numbers of persons dead, or removed, or exempted by age, or profession, or on other causes; and thus at the very root of the system there was a fatal flaw or vice which utterly destroyed its efficiency. For, of course, as the jury panels are made out from the jury lists, any error in the jury lists must be *carried* into the jury panels, and thence into the *juries*, subject only to the uncertain remedy by challenge, which throws all the burthen of injury upon the

suitors—as the persons, whose names he cannot foresee, will be called until the very moment of empanelling the jury. Added to which, as we shall see, there are many matters which, from their very nature, cannot be raised by way of challenge.

The vice of the whole system is to be detected in one or two words in the very first provision we have just quoted, as to the *qualification* of jurors. "Such and such classes, occupiers or ratepayers, &c., shall be qualified and liable to serve as jurors. The liability is treated as identical with the *qualification*; and the whole burthen of setting up and proving *exemption* is thrown upon the householders or occupiers thus declared "liable" to serve. This shews the principle on which the act is framed, that of leaving to the public the business of carrying out the act, and seeing that the jury lists are properly constructed. And then, in pursuance of this policy, the *suitors* are left to sift the jury panels, made up from the jury list, as best they may be able. The parish officers are told that householders or occupiers are qualified and liable to serve, and are then told to make out jury lists, which, of course, they make out from the poor rate lists, forgetting that, of the persons rated, a great proportion are females, or over the age limited, to say nothing of exemption by reason of their profession, as clergymen, barristers, &c. The parish officers are expressly told by the act that they *need* not expunge the names of persons excepted, who are themselves to see to it, that their names are struck off the jury lists. The matter is thus treated most absurdly as one of privilege, or favour, or indulgence, which it is for the householders to enforce. As if it would be decent, or for the public interest, that clergymen, or attorneys, or barristers, should serve on juries! As if it was not a matter rather of the public interest than of indulgence to individuals! The act, however, treats it in the latter light, and leaves to the persons "exempted" the business of getting their names struck off. The effect of which is, that if *not* struck off, as they hardly ever are, not only have they the trouble of being summoned, but the sheriff, not being able, of course, to divine who are the exempted persons, includes them in the number summoned, and when they are excused, the jury panel, from this and other causes of deficiency, falls short of the required number. Thus the suitors suffer, and the interests of justice are prejudiced. What with females and dead men, and persons removed or abroad, and persons disqualified or exempted, probably a very large proportion of the persons whose names are on the jury lists are not available for service; and of course the jury panel, in the same proportion, are defective, and include a great many non-effective names. Thus, the whole system fails and breaks down, by reason of this fatal and fundamental fault or vice in it—the absence of any effective provision for the *revision* of the jury lists.

It is, indeed, provided that the jury list or jury book shall be made up every year, and that the sheriff shall return the names of men contained in the juror's book for the then current year, and no others; but quis custodiet custodes, who shall take care that the parish officers do their duty? It is further provided,

that the sheriff shall annex a panel to the record, containing the names of a *competent number of jurors named* in the juror's book; but that, it will be seen, depends entirely on the juror's book, and assumes that all the names in it are effective and available. All turns, therefore, on the *jury lists*.

It is true, that in the jury panels the names and *additions*, with the *places of abode* of the jurors, are to be put down; and of course, if the suitors could make inquiry as to the names of all the jurors before the trial came on, they might detect the errors; but who in his senses could suppose such a thing possible? It cannot be known beforehand, of course, that any particular juror will be called (on a common jury), and when he is called it is, in nine cases out of ten, too late to make inquiry. The consequence is, that all sorts of mistakes occur, some which would be ground of challenge, and some which would not be; and in the one case, unless the suitor discover the error at the trial, he loses his remedy; and in the other case he loses it, unless he notices it at the trial. Many such cases have occurred, of persons serving who had not been summoned, and perhaps were not qualified, or not on the jury list, but, through identity of name, mistaken for those who were so (*Dovey v. Hobson*, 6 Taunt. 460); and in such cases the only remedy often is (even if there is any), the troublesome process of a new trial. Difficulties and dangers of all kinds are increased by the fact, that the undersheriff, the acting sheriff, is always an attorney, and is very likely to be in some way or other interested, if not concerned, in some of the cases which are to be tried. There is a remedy by law, by challenge at the trial, for a corrupt or unfair return of the jury panel; but that can hardly ever be ascertained before the trial, and then the mischief is done. Thus, where the attorney for the defendant being the undersheriff, and having summoned the jury, is no ground for a new trial, after a verdict for the defendant, in a case of contradictory evidence. (*Mason v. Vickery*, 1 Smith, 304). So, after a trial has been had, the Court will not grant a venire de novo, on an allegation that the jury has been convened by the partner of the plaintiff's attorney; at least, without proof that the party who objects was not aware of the fact at the trial. (*Brunskill v. Giles*, 9 Bing. 13; 2 Moo. & Sc. 41). So, as to an objection for want of qualification, it must be discovered before, and made at, the trial. Thus, for instance, where it was not sworn that the want of qualification was not discovered until after trial, the Court refused a new trial. (*Peerman v. Mackey*, 9 Jur., part 1, p. 491). So, it has been held, that after verdict, the Court will not entertain an objection which was *not made at the trial*, that the jury was wrongly summoned, and was composed of persons who were not in the jury list for the county. (*Kingston v. Groom*, 11 M. & W. 826). Of course, an objection not discovered before trial, can hardly be made at the trial, and the power of discovering it depends entirely on the jury panel annexed to the record, and the absence of which is error. (*Rogers v. Smith*, 1 Ad. & El. 772). But the jury panels are taken from the jury lists, and depend entirely

on their correctness. There is this further difficulty, that, even when the party exercises his right of challenge (which presupposes previous information), the inefficiency of the jury lists may interpose, especially in criminal cases, great obstruction to its exercise, except in those comparatively rare cases where there is a challenge for *cause*, on which either party has a right to vary the case into error. (*Mayor of Carmarthen v. Evans*, 10 M. & W. 274). There are, however, many cases in which, in civil or criminal cases, jurors objected to are told to stand by until it is seen whether or not a full jury can be made up without them. If so, then they are excluded without putting the party to his challenge; but if otherwise, he is put strictly to his challenge; and there cannot be in a civil or criminal case (except where the law gives a limited right to a prisoner to challenge without cause) (*Creed v. Fisher*, 23 L. J., Ex., 143); but there "cause" must be substantiated by proof, and must be good in law as well as proved in fact. It therefore is of serious practical importance that the jury panels should be real and *effective*, and not *deceptive*.

There are many cases in which it is difficult to discover a degree of interest which would be a legal disqualification on a challenge for cause, though there may be ample reason for telling the juror to stand aside, supposing a full jury can be made up without him. In *Bailey v. Macaulay* (19 L. J., Q. B., 82), an action against a provisional committeeman for supplies, it appeared that one of the jurymen was a brother committeeman of the *same company* as the defendant, and did not deny that he knew he was about to dispose of interests essentially the same as his own; but the fact was not disclosed, though it was discovered, until after the trial; and therefore, though the Court granted a new trial, it was only on payment of costs. It is questionable whether in strict law it would have been a ground of challenge that the juror was a provisional committeeman of *another company*; yet who can doubt that the interest might be as likely to affect the verdict? It is the common practice for the officer, at the request of a suitor, to desire gentlemen who are members of public companies to withdraw, but in many cases that would be no ground of challenge, and therefore, if there should not be a full jury without them, they might have to remain. This matter is of more importance now that, under the Common-law Procedure Act, 1852, the jury panels are so much more restricted in number, so that it is more difficult to get a sufficient number of full juries, whether common or special; and indeed it is often impossible; therefore, there is no room for the exclusion of those whose bias on the question may be suspected. What strength of bias there often is may be shewn by many cases reported, which are only a thousandth part, perhaps, of those which actually occur. In one case a few years ago, the jury having given specific answers to certain questions which came on law to a verdict for the plaintiff, one of the jury made an affidavit that he did not intend to find for the plaintiff; that he dissented from the verdict; that is (as one of the judges put it), he would have dissented from the verdict if he had thought that by the an-

swers given the verdict would be for the plaintiff (*Raphael v. The Bank of England*, 25 L. J., C. P., 33); and it is singular that on a recent remarkable case (*Hill v. Finney*) the whole jury took a similar course, and having deliberately, on their oaths, given answers to certain questions which came on law to a verdict for the defendant, insisted upon retracting their finding, and returning a verdict for the plaintiff. The very acute and interesting pamphlet by Mr. Brown, intitled "The Dark Side of Trial by Jury," gives the result of a long and painful experience upon the subject, and states, that on whole classes of cases interesting their respective businesses, the verdicts of jurors are not to be relied on. It is obvious that the only effective remedy is a rigorous exercise of the power of exclusion; and for this purpose a large scope of selection is requisite. And when it is considered how limited the total panel is under the Common-law Procedure Act, it is plain that it is more than ever necessary that the jury panel should be real and effective, and not contain the names of many who are not really available, and are *mere* names, and nothing more. Many years' observation at the assizes, and in London, has convinced the writer that the present system opens a wide door to influence of every kind, and that a remedy is urgently called for. Parties and their witnesses are seen talking with the jurors, who, as the number really available is so small, may very likely be called upon to serve. And within the last few years many instances have been observed of gross and obvious miscarriage of justice, through this cause and others, arising from the inefficiency of the jury lists.

With respect to the special jury panel, the evil is greater in this way, that all causes of any importance are certain to be tried by special juries; though, on the other hand, as there are no special juries in criminal cases (unless tried at Nisi Prius), and they are more important than most civil cases, the common jury panel is, perhaps, in that view, of most importance, and especially as the effects of prejudice and bad influence are more likely to prevail in the minds of small traders than with merchants or country gentlemen.

But this leads to the first and fatal fault in the special jury system, which arises from the same cause, already pointed out as the root of all the evil in the entire system, viz. the want of revision of the jury book. That fault is the carelessness with which the *description* of the jurors are given in the book. For the special jury list is to be made up from the names of persons described as "merchants," &c. in the general jury list; and we all know how prone small tradesmen are to call themselves merchants. The result is, there being no revision, that a multitude of persons who are not merchants, but are simply small tradesmen, get into the special jury lists; so that, in short, the special jury list, in addition to all the sources of error and inefficiency already described as attaching to the common jury lists, have this further and fatal one—that they include a large number of persons who are not qualified as special jurors. And there is this to be borne in mind, that there is a sordid motive likely

to weigh with some of the meaner sort to induce them to take care to get themselves put on the special jury list.

The fee for serving is a guinea each jury; and when the assizes last a fortnight, or three weeks, or a month, or even more, the total number of the special jury panel being so small, and perhaps a third or a half of the number not effective, the fee may be received, and often is received, by the same person over and over again, perhaps for ten or twenty times, which occurring twice a year, may not be without its inducement to some small tradesmen of the meaner sort; and there is this to be added, that the very men to whom it *would* be an inducement would be likely to be open to still baser influences, and to be accessible to downright bribery and corruption. It has begun to be observed by the bar, that the same persons appear again and again as special jurors at the assizes with a suspicious frequency, suggesting, at all events, the *possibility* of great corruption. And at all events it is manifest that there is no very free choice of jurors under the present system. For it is well known, and this is another of the numerous evils of the existing system, that it hardly ever happens that a special jury is held. It is to be borne in mind that the parties strike the special juries on the faith of the jury panel, which, as already seen, is founded on the jury lists, and is, therefore, full of errors, and is not really effective. The parties summon the special jurors, indeed, but merely by leaving the summons at their residences, having a right to assume that the jurors really are existent and qualified, and not exempted; but when they are called, half of them do not answer, or, if they do, are too old, &c. The result is, that a full special jury is hardly ever seen, and if it ever is obtained, it is only by getting other jurors who happen to be present. This is very unsatisfactory, and it is worse—it is unsafe. It constantly happens that jurors who evidently want to get into the box answer for absent jurors, and thus, in fact, get into the box under false pretences. The advocate may be acute enough to detect them; but if there is not a full jury, without them what is he to do? The very fact that they tried thus to slip into the box is suspicious; but if there are no others to serve? Thus it is, that the narrowness and ineffectiveness of the jury lists are pregnant with numerous mischiefs, which were greatly increased by the provisions in the Common-law Procedure Act reducing the jury panels.

To remedy these evils and to carry out the object of the Common-law Procedure Act, relief to the juror without prejudice to the suitor, there must be provision made for the *revision of the jury lists*, by competent legal authority. We have revising barristers for *electors*; we must have them for *jurors*. It is hard to say which is most important, the interests of the parliamentary franchise, or the purity and efficiency of the jury system. The one, it is true, influences our legislation and our government, but the other virtually renders the administration of justice, which is, of itself, an important part of government.

Jurors are our judges; they are judges in cases of life and death; in cases which concerns property,

liberty, character, and life itself. Can any care be too great to preserve the purity and efficiency of a system on which so much depends?

The minds of more than one thoughtful lawyer has been of late directed to the subject. We allude to the able publications of Mr. Serjt. Pulling and of Mr. Erle, the Associate of the Court of Common Pleas. The large opportunities of observation which Mr. Erle has enjoyed gives great force to his opinion, and we understand it to be in favour of some system of revision of the jury lists. Mr. Serjt. Pulling is distinctly of that opinion. "The short remedy," he says, "for the present defective state of the jurors' list, is to assimilate the procedure with respect to their revision to that prescribed in the case of the voters' list." That is, that there shall be a revision by a barrister. We are quite of that opinion. It is absurd to leave the compilation of the lists to parish officers, and the *correction* of them to persons *who* are absent or dead, or aged, or careless, or incompetent; for that is literally the case as it now stands. People are left to clear their own names off the jury lists; as if it was a matter of merely private concern; as if it did not concern the people at all; as if it did not affect the administration of justice. The great defect of the Jury Act is, that it does not recognise that *public* interest; and no measure will be satisfactory which does not do so. We wonder that some able lawyer in Parliament does not take up the subject.

Correspondence.

TO THE EDITOR OF "THE JURIST."

Sir,—A bill has been brought into the House of Commons for the purpose of abolishing the office of high bailiff of the county court, and transferring the duties of that office to the registrar of the court. This matter is of far greater importance than might at first sight appear, and involves social and political considerations which ought not to be dealt with in a hurry. My own opinion is strongly against the bill, but all I ask is, that it be carefully and dispassionately considered.

Some years ago, when the office of chief clerk of the county court was abolished, I thought that the exercise of the functions of chief clerk, by local registrars, would be liable to great objections, by reason of the bias they would have in favour of or against certain individuals in the neighbourhood, with whom they might come in contact in the way of business. My experience has led me to think, that I was not altogether wrong in the doubt which I entertained as to the unbiassed judgment of the local registrars in these particulars. I will not go the length of charging these gentlemen, for many of whom I entertain great respect, with any serious offence against impartiality—but cases have occurred in connexion with their clients and friends, in which I cannot in every respect uphold their conduct, as being entirely disinterested; they, in fact, have great power in their respective neighbourhoods which may be exercised for good or for evil.

In these circumstances, I ask, whether it is for the good of the country that the registrars should be armed with the powers of the high bailiff, in addition to those which they already possess? What will become of the interests of the poor mortgagor or small tenant if these gentlemen are allowed to ride rough-shod

over their slender properties? What will become of the petty bankrupt's estate, against which his landlord, probably a client of the registrar, has a large claim? And in the meantime what will become of the business of that court to which the attention of the registrar should be particularly directed?

I confess that it is with pain that I have read the intemperate letter of one of my brethren, Mr. A. J. Johnes, on this occasion. Not content with belabouring the high bailiffs as "an unmitigated evil," he actually countenances the proposition, that the abolition of the office of high bailiff is intended "as a compensation to the Treasury for the increased salary lately conceded to the judges." I think that if any Minister has made any such proposition with a view of saving a few thousands annually to the public, he ought to be impeached.

Mr. Johnes says that bailiffs of the county court should be "good men of their class, *men whose oaths may be depended upon*, and who possess a good character for sobriety, good temper, and integrity, and who have also had a fair education." I quite agree that this should be the character of all bailiffs, whether under bailiffs or high bailiffs; but I deny that this character does not apply to the great majority of my *under bailiffs*. My high bailiffs stand in a much higher position. Mr. Johnes, who seems to be unlucky in his choice of officers, should not judge of others by his own. I wholly deny the appointment of "low men" with "indifferent salary" in my circuit, as under bailiffs; but I feel satisfied, that under the proposed new system there is very great danger, indeed, of the country being infested with persons acting as agents of the county court, of a character and description most reprehensible.

I have the honour to be, Sir,

Your obedient servant,

AN EAST ANGLIAN COUNTY COURT JUDGE.

LOCAL CUSTOMS.

TO THE EDITOR OF "THE JURIST."

Sir,—The accompanying case and opinion of Sir Orlando Bridgman, may interest some of your readers, if not too long for insertion. It shews, that in the opinion of that eminent lawyer there may be valid customs of places which are neither cities, boroughs, nor manors, with respect to commons, controlling the usual rights of the lord of the manor. The case and opinion are printed in a supplement to Dr. Giles's History of Bampton, where a more detailed account of the custom will be found.

I am, Sir,

Your obedient servant,

JOSHUA WILLIAMS.

8th March, 1866.

"The case of Mr. Horde, with the freeholders, copyholders, and leaseholders of Aston and Cote, stated to Sir Orlando Bridgman and Mr. Jeffrey Palmer, the 30th November, 1657.

"A true state of the manor of Aston, belonging to Thomas Horde, Esq., together with the village of Cote, and the rest of Aston aforesaid, both in the parish of Bampton, in the county of Oxford.

"That in the villages of Aston and Cote are sixty-four yard-lands belonging to the manor of Aston-Boges, being the manor of the said Mr. Horde, of which forty yard-lands, twelve yard-lands are estated out to several tenants for lives by copy of court roll, twenty-two yards are let by lease to several tenants for ninety-nine years, if certain lives so long live, and five yard-lands, residue of the said forty yard-lands,

are let by several leases to several tenants for several terms under several rack rents, so as there is now no parcel of the said manor remaining in the lord's hands, except only the meadow and beasts-common belonging to half a yard-lands, which the said Mr. Horde reserves to himself, out of one of the leases. That of the other twenty-four yard-lands, residue of the said sixty-four yard-lands, about twelve yard-lands thereof was ancient freehold, not holden of the manor of Aston-Boges, nor paying rent to the lord thereof, or doing any suit to the courts there. That nine yard-lands, more of the said twenty-four yard-lands, were heretofore parcel of the manor of Shefford, a village adjacent, and were formerly held of the said manor by copy of court roll; but all the tenants thereof were, about twenty years since, made freeholders by Sir John Yeate, who having a joint interest with Judge Williams in the manor of Shefforde, had these lands set out to him for parcel of his moiety. That four yard-lands, residue of the said twenty-four yard-lands, do belong to the manor of Bampton-Deanery, another manor adjoining also to Aston. That the Earl of Shrewsbury and Sir George Saville are joint lords of the hundred and manor of Bampton, a town adjoining to Aston, and they have all wefts, strays, and fellow's goods, both in Bampton and in Aston, as they have in most of the towns in Bampton hundred, and the inhabitants of Aston appear at the Law-day of Bampton, and choose constables and tything-men, but no other officers there. That as well the said manor of Aston-Boges as the said twelve-yard lands, are all held of the said manor of Bampton, under several yearly rents, whereof the said manor of Aston-Boges pays a gilt sword or 18d. money yearly. That there being so many distinct parcels of land, none of them owing any suit or obedience to the manor of Aston-Boges, we cannot make it appear that any orders were ever made, or any officers chosen, or other thing done, at the courts of the manor of Aston-Boges till of late, save only the granting copy of copyholds, or americing the suitors for not appearance. But instead thereof there hath been a custom, time out of mind, that a certain number of persons called 'sixteens,' or the greater part of them, have used to make orders, set penalties, choose officers, and lot the meadows, and do all such things as are usually performed or done in the courts baron of other manors. But for the better understanding the meaning of the sixteens, it is to be noted that there is in Aston and Cote as aforesaid, sixty-four-yard lands, which are divided into sixteen hides, every four yards accounted for a hide, and sixteen persons, one for every hide, take their turn yearly in the authority of the sixteen to make orders, &c. That the sixteens are chosen at our Lady-day yearly, and the officers of the town some at Michaelmas and some at Lady-day. That Mr. Horde, lord of Aston-Boges, being willing to put an end to this authority of the sixteens, and reduce the government of the town to the obedience of the courts of his manor, hath taken covenant from seven or eight of his tenants, to whom he hath lately let several of his yard-lands in Aston and Cote, that they shall wholly submit to the orders of his court, and not agree to any of the sixteen's orders. That in Aston and Cote are two great lottmeads, one called Aston In-mead, and the other Aston Out-mead. That within these two meadows are several hams of meadow, viz. the Bull-ham, the Hayward's-ham, the Worden-ham, the Woner's-ham, the Grass Steward's-ham, the Water Hayward's-ham, the Homage-ham, the Smith's-ham, the Penny-ham, the Herd's-ham, and the Brander's-ham, &c., which said hams are to the value of about 40l. per annum, and are disposed at the discretion of the sixteens (I think), some to the officers whose names they bear,

some to the public use of the town, as for the making of gates, bridges, &c., and some sold to buy ale for the merry meeting of the inhabitants. That there are also in Aston and Cote several leyes of greensward lying in the common fields, two years mowed and the other fed; viz. Catmore leyes, other greensward, and bushes on Claywell-hill, No Man's plot, Holliwell-green, the ham-ways, Trueland's plots, and some other that are also disposed at the discretion of the sixteens or towns. That Aston and Cote lie in a rich vale near to the river Thames, and have belonging to it very large and rich commons, worth, one with another, about 30s. per acre. That there is a poor man in Aston that hath procured a license from the sessions to build a house on the waste with the consent of the lord of the manor. That Mr. Horde conceiving all the said hams to be parcel of the waste, and that the sixteens were no warrantable custom to create a right in them to the soil or inheritance of the said hams, and that the officers chosen by the sixteens could be no lawful officers, because not chosen or sworn at any lords' court, did about three years since carry away the hay growing on the said hams. That at a court holden by the said Mr. Horde at our Lady-day last, several officers were chosen and sworn, and the hams were there granted them which they have this year enjoyed accordingly. That at Michaelmas, 1657, the sixteens, amongst other officers, chose a hayward, who refused to be sworn at the said court held at our Lady-day last, whereupon the homage, who were the greater number of the sixteens, chose another hayward, who was there sworn into the said office. That the new chosen hayward, being frightened with the threats of Sir Thomas Horde, refused to execute his office, and the old hayward continued, whereupon Mr. Horde took to himself the ham called the Hayward's-ham. That the sixteens gave a horse-common to the hayward of their own choosing, which had anciently been enjoyed by those that had the same office. This horse-common the hayward stocked, whereupon Mr. Horde impounded his horse, which lay in the pound about a fortnight, and then broke out. That in and about Aston and Cote are many rivers and good store of fish and fowl. That it hath long been accustomed and is known by repute, that such a part of the fishing of the river belongs to such tenants; and in all or most part of the old deeds or leases of the several tenements are granted the fishings thereunto belonging; those parts of the river are called several-waters, and then there are other parts of the river called common-waters (though every man knows his part of the ridding thereof), in which is pretended a liberty for all to fish without control.

"The questions hereupon are these:—

"1. First.—Who in reason may be thought the lord and owner of the soil of the commons in Aston and Cote, and of the lot-meads there?

"Bridgman.—The soil of the common is the lord's, but of the lot-meads, the freeholders and others who have the lots.

"2. Query.—All they that purchased their reversions of Sir Edward Yeate have not all utterly lost their common of pasture, for how could Sir Edward Yeate well grant them common in all the commonable places in Aston and Cote, where the soil was not his own, and where himself had only common of pasture by prescription?

"Bridgman.—If the copyholders, having right of common to their copyholds, purchase the freeholds, the common to their copyholds is extinct, for the prescription to the copyholds will not be extended to the freehold, but such common as Sir Edward Yeate had to his freehold will pass with the freehold.

"3. Query.—The custom of the sixteens, though used time out of mind, be a sufficient authority to

make orders, choose officers, &c., and whether the officers chosen by them be lawful officers?

"Bridgman.—I conceive the custom is good, and the officers lawful officers.

"4. Query.—The custom of the sixteens be not destroyed, if Mr. Horde's tenants, in pursuance of their covenants, shall refuse to act with them?

"Bridgman.—Their refusal doth not destroy the custom, but the rest may act without them; and it may be a better way for Mr. Horde to make use of his tenants for elections, so having the majority of voices rather than invade the custom.

"5. Query.—The sixteens, being no corporation, can have any legal estate in the said hams, of meadow, and leyes, of greensward, to dispose of the same; or whether the officers, not being chosen at any court, can have any estate therein; or whether they belong not all to the lord of Aston, as parcel of his waste, wherein no other person can claim any particular estate; and query, any person whatsoever may maintain an action against Mr. Horde for taking away the hay, and what is the best course for Mr. Horde to take to try his right to them; and if Mr. Horde should break up and sow the said leyes in the fields; query, he may not justify it, and carry away the corn thereof growing, and who can bring any good action against him for it?

"Bridgman.—I do not conceive Mr. Horde have any right to the leyes in the fields; if the custom be good (as I take it to be), the same custom will give the officers an interest, as incident to their offices, and may belong to an office, as in the case of the warden of the fleet.

"6.—If the custom of the sixteens should be destroyed, what course is there to be taken to bring the town in protection, either to Mr. Horde's courts or any other power that may tend to the good government and regulation of the town?

"Bridgman.—I think the custom cannot be destroyed by Mr. Horde alone, without the consent of others, nor can he bring any matters to his court which hath not been used, nor choose officers at his court touching the commons, &c.

"7.—We are advised, Mr. Horde cannot improve or inclose the common, by reason of his leaseholders, who have common granted them in all commonable places; but our query is, whether the poor man that hath procured a license to erect his cottage in any part of the common where the lord shall appoint, though far from the town, and on rich ground; and query, after the cottage is erected, it may not be again suddenly pulled down by another order of the sessions; and query, the poor man may not have his action against any of Aston and Cote, or other person whatsoever, that shall endeavour to pull down his house?

"Bridgman.—I conceive, in the waste (by leave of the lord) a cottage may be erected, and no commoner, or other, without leave of the lord, can pull it down, if there be sufficient common left.

"8. Query.—Mr. Horde may not justify the taking away the Hayward's ham last year, the first Hayward refusing to be sworn, and the other to execute the office. Query, the first Hayward, or any under him, can maintain a good action against Mr. Horde for carrying away the hay of the ham?

"Bridgman.—This is, in part, answered before; the custom being good, Mr. Horde's justification will be bad.

"9. Query.—Mr. Horde may not bring his action of trespass against the first Hayward for stocking the common with a horse having broke out of the pound, and no suit thereupon?

"Bridgman.—I think he cannot *causa qua supra*.

"10. Query.—Mr. Horde may not bring his action

of trespass against any person overstocking the common of Aston, though he oath no land there now in his own possession?

"Bridgman.—The proper way is, to have it presented into court, or the lord may distrain the surplus for damage feasant.

"11. Query.—The tenants of a manor may prescribe to common for geese and pigs, and if the same root up and spoil the common, query, the lord may not bring his action of trespass against the owner. And if the lord's pigs should do the like, who could bring any action against him?

"Bridgman.—There may be a prescription for cattle not commonable, but then the common is not appendant, but appurtenant; against the lord there is no remedy, but action on the case, if the lord hinder him from having his common usually as he ought to have it.

"12. Query.—All fishing, fowling, hawking, and hunting do not properly belong to the lord of the manor, unless there be some particular grant to divert it to another; and query, a tenant or freeholder can prescribe against the lord to take from him his fishing in his own freehold within his manor, especially to fish the said common water?

"Bridgman.—A prescription is good in such case for every prescription.

"13.—And query, Mr. Strode may not justify the nets of any person fishing there, where no one pretends any particular rights?

"Bridgman.—He may distrain them, damage feasant, if the soil be his, but cannot cut the nets.

"14.—Supposing the great mead to be a movable inheritance by lot cast by the sixteens, if any one do dissent from his lot, query, he may not put in his cattle as tenants in common, notwithstanding the lots?

"Bridgman.—He must take his lot according to custom, and as is right is maintained by usage, so is the manner of it.

(Signed) "BRIDGMAN, NOV. 30, 1657."

GENERAL EXAMINATION.—TRINITY TERM, 1866.

The Council of Legal Education have approved of the following rules for the public examination of the students.

The attention of the students is requested to the following rules of the Inns of Court:—

"As an inducement to students to propose themselves for such examination, studentships and exhibitions shall be founded of fifty guineas per annum each, and twenty-five guineas per annum each respectively, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each general examination; and one such exhibition shall be conferred on the student who obtains the second position; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations; and the Inns of Court to which such students as aforesaid belong, may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided that the examiners shall not be obliged to confer or grant any studentship, exhibition, or certificate, unless they shall be of opinion that the examination of the students has been such as entitles them thereto."

"At every call to the Bar those students who have passed a general examination, and either obtained a studentship, an exhibition, or a certificate of honour at such examination, shall take rank in seniority over

all other students who shall be called on the same day."

RULES FOR THE PUBLIC EXAMINATION OF CANDIDATES FOR HONOURS, OR CERTIFICATES ENTITLING STUDENTS TO BE CALLED TO THE BAR.

An examination will be held in next Trinity Term, to which a student of any of the Inns of Court who is desirous of becoming a candidate for a studentship, an exhibition, or honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the Inn of Court to which he belongs on or before Wednesday, the 9th day of May next; and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction, or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

The examination will commence on Thursday, the 17th day of May next, and will be continued on the Friday and Saturday following.

It will take place in the Hall of Lincoln's Inn; and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order:—

Thursday morning, the 17th May, at half-past nine, on Constitutional Law and Legal History; in the afternoon, at half-past one, on Equity.

Friday morning, the 18th May, at half-past nine, on Common Law; in the afternoon, at half-past one, on the Law of Real Property, &c.

Saturday morning, the 19th May, at half-past nine, on Jurisprudence and the Civil Law; in the afternoon, at half-past one, a paper will be given to the students including questions bearing upon all the foregoing subjects of examination.

The oral examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the examination by printed questions, except that on Saturday afternoon there will be no oral examination.

The oral examination of each student will be conducted apart from the other students; and the character of that examination will vary, according as the student is a candidate for honours, or desires simply to obtain a certificate.

The oral examination and printed questions will be founded on the books below mentioned, regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

A student may present himself at any number of examinations until he shall have obtained a certificate.

Any student who shall obtain a certificate may present himself a second time for examination as a candidate for the studentship or exhibition, but only at the general examination immediately succeeding that at which he shall have obtained such certificate; provided, that if any student so presenting himself shall not succeed in obtaining the studentship or exhibition, his name shall not appear in the list.

Students who have kept more than eleven terms shall not be admitted to an examination for the studentship or the exhibition.

THE READER ON CONSTITUTIONAL LAW and LEGAL HISTORY proposes to examine in the following subjects:—

1. The principal statutes from the time of King John to that of Queen Anne.
2. The State Trials in the Stuart period (1603-1713).
3. The chapter on the English Constitution in Hallam's *Middle Ages* (c. 8, part 3).
4. Hallam's *Constitutional History*.

THE READER ON EQUITY proposes to examine in the following books:—

1. Haynes's *Outlines of Equity*; Smith's *Manual of Equity Jurisprudence*; Hunter's *Elementary View of the Proceedings in a Suit in Equity*, part 1.
2. The Cases and Notes contained in the 1st volume of White & Tudor's *Leading Cases*; the Act to further amend the Law of Property and to relieve Trustees, 22 & 23 Vict. c. 35; the Act to further amend the Law of Property, 23 & 24 Vict. c. 38; the Act to give to Trustees, Mortgagees, and others, certain Powers now commonly inserted in Settlements, Mortgages, and Wills, 23 & 24 Vict. c. 145; the Act to regulate the Procedure in the High Court of Chancery and the Court of Chancery of the County Palatine of Lancaster, 25 & 26 Vict. c. 42; the General Orders of the Court of Chancery of the 1st February, 1861, and of the 5th February, 1861 (7 Jur., N. S., part 2, p. 58); Mitford on Pleadings in the Court of Chancery—Introduction, c. 1, ss. 1, 2; c. 1, s. 3 (the first six pages); c. 2, s. 1; c. 2, s. 2, part 1 (the first three pages); c. 2, s. 2, part 2 (the first two pages); c. 2, s. 2, part 3; c. 3.

Candidates for certificates of having passed a satisfactory examination will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for the studentship, exhibition, or honours will be examined in the books mentioned in the two classes.

THE READER ON THE LAW OF REAL PROPERTY, &c., proposes to examine in the following books and subjects:—

1. Joshua Williams on the Law of Real Property, 7th ed.
2. The Act 8 & 9 Vict. c. 106.
3. Lewin on Trusts, pp. 1-39, 4th ed.
4. Conditions and Conditional Limitations; Josiah Wm. Smith on Real and Personal Property, pp. 57-114, 3rd ed.
5. *Tyrell's Case*, Dyer, 155a, and the Notes to that Case; Tudor's *Leading Cases in Conveyancing*, pp. 274-304, 2nd ed.

Candidates for the studentship, exhibition, or honours will be examined in all the foregoing books and subjects; candidates for a certificate in those under heads 1, 2, and 3.

THE READER ON JURISPRUDENCE, CIVIL, and INTERNATIONAL LAW, proposes to examine in the following books and subjects:—

1. Justinian's *Institutes*, book 3, with the Notes of Sandars or Ortolan.
2. Mackeldeii—*Systema Juris Romani—Pars Specialis*, lib. 2, § 352-416 (pp. 362-407, ed. Lips., 1847).
3. Code Napoléon, Art. 1582-1701. De La Vente.
" Art. 1708-1831. Du Contrat de Louage.
" Art. 1832-1873. Du Contrat de Société.
Code de Commerce, Art. 18-64. Des Sociétés.
4. Wheaton's *International Law*, part 2, c. 2; Rights of Civil and Criminal Legislation, pp. 160-295, (ed. 1863).

5. Austin's *Province of Jurisprudence* defined. Lecture 6.

Candidates for the studentship or honours will be examined in the whole of the above-named books and subjects; but candidates for a pass certificate will be examined in 1, 4, and 5.

THE READER ON COMMON LAW proposes to examine in the following books and subjects:—

Candidates for a pass certificate will be examined in—

1. The ordinary Proceedings and Course of Pleading in an Action.
2. Smith's *Lectures on Contracts*, last ed. Lectures 1-5 inclusive.
3. The Law of Torts, as set forth in Broom's *Commentaries on Common Law* (3rd ed.), book 3, cc. 1 and 2.
4. The Law of Simple Larceny, False Pretences, and Homicide, including the proofs adducible on a Trial for any of the above offences, as stated in Archbold's *Criminal Pleading* (last ed.).

Candidates for the studentship, exhibition, or honours will be examined in 2, 3, and 4, supra, and also in—

5. The Pleading Rules of 1853, Nos. 6-8, inclusive, 10, 12, 14-17, inclusive, 19, and 20.
6. Taylor on Evidence (last ed.), part 1, c. 3, Functions of Judge and Jury. Part 2, c. 3, Burthen of Proof.
7. The "Acquisition, Enjoyment, and Transfer of Property," Broom's *Legal Maxims* (4th ed.), c. 6.
8. The under-mentioned portions of the Criminal Law Consolidation and Amendment Acts, with the Notes thereto appended in Mr. Greaves's Edition of the Acts:—

Larceny Act, 24 & 25 Vict. c. 96, ss. 3, 5, 6, 54, and 58.

" c. 100, ss. 4, 6, 7, 9, 10, and 15.

In connexion with the sections specified, the Common Law definitions of offences to which they relate should be consulted.

By order of the Council,

WESTBURY, Chairman.

Council Chamber, Lincoln's-inn,
March 5, 1866.

ASSOCIATION OF CHAMBERS OF COMMERCE OF THE UNITED KINGDOM.

THE annual congress of the representatives of the various Chambers of Commerce of the United Kingdom met on the 27th February, for the purpose of discussing the various subjects appertaining to the law and customs regulating customs. Mr. Sampson S. Lloyd, in the chair.

COMPULSORY REGISTRATION OF THE NAMES OF ALL PERSONS CONSTITUTING PARTNERSHIPS.

Mr. Wordsworth moved—"That a petition from this association be sent to both Houses of Parliament, praying that provision be made by the law for the compulsory registration of all partnerships. That a copy of the above resolution be sent to the President of the Board of Trade." He said that great difficulties had arisen in consequence of merchants not knowing with whom they were dealing. The word "Co." was frequently attached to the name of a firm when probably there was not one of the name in the firm, and when a change took place they simply wrote, "We beg to inform you that our senior partner has retired," but who he was, or who was left in the firm, there was no knowing.

Mr. Lupton seconded the motion.

An animated discussion ensued, during which it was questioned whether machinery could be adopted short of imprisonment for compelling registration.

Mr. Wordsworth, in reply, said that they might deprive the firm of any right to sue, or of one partner to claim against another unless the names were registered, and that he thought would be sufficient to compel every genuine firm to register.

The motion was put and carried unanimously.

THE LAW OF PARTNERSHIP.

Mr. Lupton moved—"That without relinquishing in the slightest our approval of the main principle of the act passed in last session to amend the law of partnership, this association deems it nevertheless desirable that all loans of money to trading concerns entitling the lenders to a share of the profits without becoming partners, together with the conditions thereof, shall be registered. That a deputation from this association do wait upon the President of the Board of Trade to present the above resolution, and to request that her Majesty's Ministers bring in a bill to provide for such registration." A man, he said, might throw a large sum of money into a concern, and enable them to get credit to an enormous amount, on the belief that the firm was very wealthy. He might afterwards see something going wrong, withdraw his money, and leave the creditors in the lurch. He thought it quite necessary that the loans should be registered.

Mr. Morrison seconded the motion, and after considerable discussion it was carried by 23 to 3.

Mr. Dufferin moved, as an additional resolution:—"That all lenders of money to trading firms, on the condition of receiving a share in the profits, withdrawing their money, shall be liable to the extent of such loan for all debts contracted up to the time of such withdrawal."

Mr. Lupton seconded the motion, which, after some discussion, was agreed to.

BANKRUPTCY LAW REFORM.

Mr. Wright brought up a series of resolutions on this subject from the Birmingham Chamber of Commerce, when

Mr. Moffatt, M. P., said he had given the subject a great deal of consideration for some years past, and had come to the conclusion that the law ought not to release the debtor without the consent of the creditor, but that the creditor should not have the power over the person of the debtor. Before they went to Parliament that question ought to be well ventilated.

Mr. Wright then moved the first resolution:—"That the experience of the commercial community, and the evidence taken before the select committee of the House of Commons in 1864, combine to shew that a thorough reform of the English law of bankruptcy, and of the system of procedure under it, is urgently needed."

Mr. Kell seconded the motion, and it was agreed to.

Mr. Smith then moved:—"That this meeting does not approve of the abolition of imprisonment for debt under any judgment, decree, or order of any court."

Mr. Bruton seconded the motion.

Mr. West moved the "previous question," as the resolution just proposed required more consideration, and also because it had never been submitted to the chambers of commerce throughout the country.

Mr. Dufferin seconded the amendment, but on being put it was lost.

Mr. Wrigley then moved an amendment suggested by Mr. Morley, as follows:—"That this meeting objects to imprisonment for the mere recovery of debt, but is

of opinion that it is inexpedient to abolish imprisonment for debt where the insolvent debtor refuses to give up his property."

Mr. Wills seconded the amendment, but it was lost by a majority of 13 to 9.

The original motion was then put, and carried by a majority of 13 to 4.

Several other clauses were discussed and adopted, as recommended by the select committee of the House of Commons.

The remaining clauses with some amendments were carried.

Mr. Wright's resolutions were then put to the meeting and agreed to.

Imperial Parliament.

HOUSE OF COMMONS.—Friday, March 9.

OBsolete STATUTES.

In reply to Mr. Hadfield,
The Attorney-General said he believed he should be able to lay on the table, soon after Easter, a bill for the expurgation of the obsolete statutes.

In reply to Mr. Williams,
The Attorney-General said he believed he should be able, immediately after Easter, to bring in a bill for the consolidation and amendment of the bankruptcy laws.

Tuesday, March 13.

REAL ESTATE INTESACY.

Mr. Locke King obtained leave to bring in a bill for the better settling the real estates of intestates.

Wednesday, March 14.

PROSECUTION EXPENSES BILL.

Mr. Goodson moved the second reading of this bill, the object of which was to extend the principle of the law as it now existed.

Mr. G. T. Baring said the Government would not oppose the second reading, but they reserved to themselves the right of amending some of the clauses in committee.

Mr. Henley was glad that the Government did not offer any opposition to the bill.

The motion was then agreed to, and the bill read a second time.

BOOKS RECEIVED.

Notes on recent Events in the Island of Jamaica, and on the Right of the Crown to proclaim Martial Law. By G. A. Young, Esq., of Gray's-inn, Barrister-at-Law. 8vo., pp. 16.—Stevens & Sons.

Legal and Equitable Rights and Liabilities as to Trees and Woods. By Richard Davis Craig, Esq., one of her Majesty's Counsel. 8vo., pp. 207.—Maxwell.

Maritime Capture. Shall England uphold the Capture of private Property at Sea? By a Lawyer. 8vo., pp. 40.—Trübner & Co.

A Treatise on the Court of Referees in Parliament, containing Chapters on the Practice and Jurisdiction of the Court on the Locus Standi of Petitioners in the House of Commons, and Reports of the Cases decided in that Court during the last Session; reprinted by Permission (with Additions) from the Law Times. By John Henry Fawcett, of the Middle Temple, Barrister-at-Law. Together with a Chapter on Engineering and Estimates, and a Digest of the Reports made by the Referees to Parliament. By R. D. M. Littler, of the Inner Temple, Barrister-at-Law. 8vo., pp. 146.—Horace Cox.

Thoughts on the present State and Prospects of Legal Discontent. No. 8. pp. 21.—Stevens & Sons.

THE NEW LAW COURTS.—At the old Insolvent Debtors Court, on Monday, the High Bailiff of Westminster (Mr. Scott Turner) presided over a jury assembled to assess compensation in the case, *Moss v. The Commissioners of the New Law Courts*, for premises required for the new courts. The houses were 6 and 7, Crown-court, Picket-place. Mr. Hawkins, Q. C., and Mr. Garth appeared for the claimant, Mr. Emanuel Moss, the freeholder; Mr. Joseph Browne, Q. C., and Mr. McMahon were for the Commissioners. The claim was between 1900*l.* and 2000*l.* The rental of the two houses was 40*l.*, and had been let for a number of years to a person named Palmer, in the employ of Mrs. Smith, the news agents, and to his wife previously at the same rent. Several valuers were called for the claimant. The net value of the houses was 80*l.* a year, after all deductions. Palmer said he would give 70*l.* a year if he could have a lease granted. According to the evidence there was a great demand for houses for working men, and weekly tenements were in great request. The houses in question were let out to weekly tenants. In consequence of the demolition for railways, places for working men could not be procured, and many were living a little way out of town, especially at Greenwich. Palmer said if he could have obtained a lease, he should, to new lodgers, have increased the rents. The valuers stated that the property was worth twenty-two years' purchase on the weekly sums received, and, with 10*l.* per cent., the compensation would be about 1950*l.* Mr. Browne complained that the claim was greatly exaggerated, and said the Commissioners, in order to protect the Suitors' Fund, out of which the compensation would be paid, had felt it to be their duty to resist the demand. The jury had viewed the dirty, dingy, and old houses, and he should prove that the property was not worth 800*l.* Mr. Ryde, Mr. Shaw, and other surveyors were called, and their valuation was between 700*l.* and 800*l.*, taking the present rental, which was all it was worth. Mr. Hawkins declared that the surveyors had proceeded on a false estimate of the value, and called upon the jury to give a liberal compensation. Every person knew that the value of property had increased in the metropolis, and no matter where it was situated, in a low neighbourhood as alleged, it was worth the sum it would fetch. Another reason for a liberal compensation was, that the Commissioners had forced the claimant to come before the jury, as they had made no offer, and it was well known that in all such cases the claimant, after the payment of the costs as taxed, was generally 100*l.* out of pocket. The High Bailiff told the jury they had to give a fair valuation for the property taken by the Commissioners, considering the rent as paid and the present value. The jury retired for some time, and on their return assessed the compensation at 1980*l.* Mr. Scott Turner stated that the special jurors who had been summoned and had not attended would be fined 10*l.* each.

Mr. T. H. Terrell, of the Equity Bar, has been appointed Judge of the County Court of Clerkenwell, in the place of Mr. Serjeant Jones, deceased. Mr. Vaughan Hawkins succeeds Mr. Terrell as junior counsel to the Charity Commission.

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Benchers' Reading room, Lincoln's-inn,
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THE JURIST.

LONDON, MARCH 24, 1866.

IN the early part of this month a deputation from the National Association for the Promotion of Social Science proceeded to the Treasury by appointment, with the intention of asking the Government to undertake a digest of the English case law. Their object was frustrated by Earl Russell's indisposition; and it is understood that some independent member will bring the matter before the Government and the Legislature at the same time in the House of Commons. We are glad that the project of a digest is not forgotten; but we trust that it will for many years be a project only. We believe, contrary to the common opinion, that a digest of case law is far more practicable, if not more important, than a consolidation of statutes. The difficulties, indeed, attending the latter operation are so great as to be almost insuperable, and, therefore, it would hardly be fair to urge the complete failure of all the attempts that have been made to effect it as a direct argument for leaving the reports in their present condition. Indirectly, however, we may, while in search of a digest, take warning from the late proceedings with a view to a code. The Statute Law Commission numbered among its members some of the most distinguished lawyers of the day; it existed upwards of five years; it spent abundance of money; it left the statutes as it found them; and its dying confession amounted to this—that the task set before it was very puzzling; that it did not know exactly how it was to be performed; that it had tried several consolidation bills, and found that the materials would not consolidate kindly, being, in fact, mere fragments or patches upon the common law; wherefore it supposed that the best way, if possible, would be to make the modern statutes and the common law into one hash, and to leave the old statutes outstanding like fossils in a museum, because, by dint of forensic constructions or incrustations, they had acquired the form and characteristics of common law. That a commission of learned and practical lawyers should have spent nearly five years and 20,000*l.* in playing at codification, only to throw up their cards on discovering that acts of Parliament are fragmentary alterations of or additions to the law, ought to make us pause before we incur the risk of wasting the time of as many more lawyers and spending as much more money, in order to be told at last that we were fools for our pains, inasmuch as cases are but particular instances of the application of general principles.

What the Statute Law Commission began dimly to apprehend a few months before its dissolution has been familiar doctrine with thinking lawyers from the time of Lord Bacon, and had been explained in the most lucid manner by several of the common-law judges, in giving their opinions as to the proper mode of consolidating the criminal law. But as moths fly to the light for which they were not made, so there

seems to be a fatality which impels precisely those men who are incapable of taking a firm hold of the first principles of jurisprudence into the region of law reform. Even in the compass of the same address we find Sir James Wilde at once extolling the method by which we record the rules of the common law in examples and not in precepts, and proposing to abandon it for a collection of abstract propositions. In another address, to which is appended a name which, strange to say, is still popularly regarded as one of the most illustrious, and not as the most infamous, in the annals of legal reform—an address read before the Juridical Society—we find the following project of the improvement of the English case law:—

"Many persons talk about codification without the least notion of the meaning or effect of the word. It is the characteristic and the merit of our law that it is always entangled with facts; but, on the other hand, it often happens that the law is overlaid by the facts of the case. The judges studiously avoid saying anything more than the facts before them imperatively require, the result of which is, that the law and fact are mixed up in what are called 'precedents,' the difficulty of extracting a rule from which is exceedingly great; and if you watch the proceeding of the Courts, you will see the great amount of judicial time consumed by this. An advocate knows that a certain rule has been enunciated, but is uncertain where to find it. He, therefore, cites *A. v. B.*, *C. v. D.*, and so on to the end of the alphabet, and applies this laborious process to shew that such and such is the rule. It is frequently extracted with great difficulty, and often with some uncertainty, for the opposite counsel says there were some particular facts in the cases cited which are not in the case at the bar; the judges accede to the distinction suggested, and say the cases are different, and that dictum must be interpreted *secundum subjectam materiam*; so that the unfortunate rule is often maimed and mutilated in extracting it from the mass of rubbish in which it is involved. Why should not all this be submitted to men able to examine and comprehend the authorities, and embody the rule to be derived from them in one single abstract proposition, which should remain a most ready and applicable instrument fit to be used at all times? But this process, so simple and so natural, and the principle of which you are obliged to apply so constantly, is only codification. Now, one duty of the Minister of Justice would be to take the decisions of the current year, in connexion with those of past times, and express in a compact form those general rules for which, as the law stands, you are obliged to apply to authority whenever you want to deduce a rule to be applied to the case before you. . . . In England, although society has the greatest possible interest in the results of particular cases, yet whether from those cases shall accrue benefit to society depends entirely on the litigant parties to them. For instance, a case is erroneously decided by one of the ordinary courts of law, or one of the Vice-Chancellors; a rule of great mischief is established by that decision, but it does not suit the litigant party who has been defeated to carry it further; the consequence is

that it passes into a precedent. . . . As a remedy, I would arm the body of men of which I have spoken with authority, whenever they find a decision such as I have described, with the power of stating a case in an abstract form, in order that matters of great importance to the community may be settled at once*."

When we find a high reputation based upon the confident utterance of such presumptuous nonsense as this (for what we have cited is no unfair specimen of the staple of Lord Westbury's speeches on law reform), we may well desire to postpone any attempt to improve the form of our laws until the principles which ought to govern such an attempt have been—we do not say ascertained, for they were ascertained at least three centuries ago—but made popular and familiar by discussion. There are signs that the process is going on, and that the ignorant and mischievous declamations of adventurers in legal reform are likely to be superseded by the conscientious and well-considered expositions of scientific lawyers. Sir James Wilde's address at the Social Science Congress of 1864, though neither original nor free from serious error, was far more instructive and suggestive than anything which had previously been said on the subject to a popular assembly; and a very great advance beyond that achievement was made in the following year by Mr. P. F. White, in his introductory lecture on "The Re-arrangement or Codification of the English Laws," addressed, it is true, by him in his professional character, to the students of the King's Inn, Dublin, and not to a lay audience. But it has been published†, and may be expected to do good service in guiding and correcting the views of at least a considerable portion of the professional public.

The absurd proposal to codify our case law is thus disposed of by Mr. White:—

"When the Code and Pandects were completed, they needed but the word of a despotic legislator to transmute them into direct law. To convert our Judiciary digest into a statutory code would require the consent of 1000 legislators. But let us assume that Parliament, either directly or through the only practical medium—the deputed agency of some commission, has framed and adopted the digest, and given it the form of statute law. The expansiveness and flexibility of the entire Judiciary law would then be instantly removed from the whole body of cases absorbed in the digest. Each rule would cease to be any longer capable of being reviewed or extended, and so often as a discovery in science, a novel institution, or a changed condition of society, rendered these inflexible maxims inexpedient or inapplicable, it would be necessary again and again to run to Parliament to rescind or even to modify them.

"Another injurious consequence would be, that the value of these abstract rules would be in a great measure lost by their separation from the facts in reference to which they were framed. They would become incapable of elucidation from that source, and whenever ambiguity arose, they would be interpreted, like other statutory laws, by the *lex ipsa*, apart from the valuable indication of meaning afforded by the circumstances and arguments on which they were grounded.

"The vast difficulty and uncertainty thus sure to be created could not be over estimated. We can, perhaps, on a limited scale, imagine the probable results, by conceiving a digest of principles on some refined

equitable doctrine, such as the marshalling of incumbrances or of assets, divorced from the intricate circumstances under which they were applied, and stated in condensed essence, which would assuredly be fraught with obscurity.

"This project of converting judiciary into statute law was rejected by Bacon. 'Sure I am,' he said, 'there are more doubts that rise upon our statutes that are a text law, than upon our common law which is no text law. But however that question be determined, I dare not advise to cast the law into a new mould.' And Austin admits, that unless a statute be 'skilfully drawn,' it is usually more uncertain than a judiciary rule, because it is easier to extract the rule from a case by its numerous indicia, than the meaning of a statute from ambiguous words. He contends, that a well-drawn statute is better than judiciary rules, and thence concludes, that the conversion of the latter into an enactment is desirable. But the entire question is substantially begged in his use of the term 'well drawn,' as applied to the statute. That qualification is evidently employed by him in the sense of excluding ambiguity—a result which could be equally attained by a well-drawn judicial rule.

"Besides, no means exist of attaining such accuracy in the composition of statutes as will exclude ambiguities. The French language is proverbial for logical accuracy, and the French genius is distinguished by refinement and precision, and yet the French Codes, though overlaid with interpretative comments, have failed to secure that certainty which is attributed to 'well-drawn' statutory law. A striking proof that this Code fails to make the law more unambiguous when difficult questions arise, has been instanced by Lord Cranworth. The Privy Council, desiring to ascertain the French law on a particular question, caused the opinions of twelve leading advocates to be taken. Six concurred in one opinion, six in the direct reverse. In 1857 it was stated before a parliamentary committee, that the decisions in France upon the Code were not less than our own corresponding decisions, and that the cases in the Court of Cassation filled some 120 volumes, an array far outnumbering our entire House of Lords Reports."

Mr. White thus concludes the discussion of this part of his subject:—

"The practical conclusion to be derived from an attentive view of this entire subject of codification applied to the laws of England, may be thus summarised:—First, as to the statute law, that all useless, contradictory, and obsolete statutes should be repealed, and the operative ones reduced into a classified and systematic Code of Statute Law, and that the composition and arrangement of all future acts should be amended and framed with reference to the new statutory code. Secondly, as to the judiciary law, that the reports should be revised and expurgated throughout by the suppression of obsolete and exploded cases; that a scientific Digest, by authority, of all the preserved cases (and in the same scientific order as the statutory code, so far as their subjects concur), should be made, but that it should not be transformed into statute law, so as to give any greater force to judiciary rules than they already possess when tested by reason in a court administering the judiciary system; and as a necessary conclusion from these premises, that a combination of statute and judiciary law into one consolidated code is impracticable.

"These opinions, the result of modern experience and argument, will be found almost identical with the recommendations of Bacon in his celebrated proposal; and it is, indeed, strange to think how prophetic is genius, and how instinctively the comprehensive mind of that great man anticipated, by more than two cen-

* Address of Sir Richard Bethell, Q. C., M. P., on vacating the office of president of the Juridical Society at the anniversary meeting, the 21st February, 1869.

† By Hodges, Smith, & Co., Dublin.

turies, one of the most difficult social problems of our time."

We do not concur in the proposal, to have a digest of principles compiled by authority. We think, with Von Savigny, that such digests are better done by private enterprise. An authoritative digest would, so far as it was authoritative, fetter the discretion of the Court, unless, which is most likely, it was made a job of, and became a dead letter.

A great deal of nonsense was talked by some of the gentlemen who went from the Adelphi to Downing-street, and a great deal more will doubtless be spoken in Parliament; and it is very desirable that other lawyers who can think as justly and write as well as Mr. White, should infuse a little common sense into the discussion.

LIST OF SHERIFFS AND UNDERSHERIFFS, WITH THEIR DEPUTIES AND AGENTS, FOR 1866.

* * Warrants are granted in town for all places except Bristol, Canterbury, Chester, Derbyshire, Devonshire, Durham, Exeter, Gloucestershire, Gloucester City, Herefordshire, Haverfordwest, Kingston-upon-Hull, Lancashire, Lichfield City, Monmouthshire, Norwich, Poole, York City, and the remainder of the Welsh counties. Office hours—in Term, from 11 till 4, and in Vacation, from 1 till 3.

Bedfordshire—Chas. Livius Grimshawe, Esq., Apsley Guise.
Undersh., John Garrard, Esq., Olney, Bucks.

Deps., Iliffe, Russell, & Iliffe, 2, Bedford-row, W. C.

Berkshire—John Blandy Jenkins, Esq., Kingston House, Abingdon.

Undersh., { John Thornhill Morland, Esq., Abingdon.
John Jackson Blandy, Reading. A. U.

Deps., Gregory, Rowcliffe, & Rowcliffe, 1, Bedford-row, W. C.

Berwick-upon-Tweed—Stephen Sanderson, Esq., Berwick-upon-Tweed.

Undersh., W. Willoby, Esq., Berwick-upon-Tweed.

Deps., Aldridge, Bromley, & Thorn, 31, Bedford-row, W. C.

Bristol—Jos. Cooke Hurl, Esq., Brislington, near Bristol.

Undersh., James Davison Wadham, Esq., Bristol.

Deps., Bridges, Sawtell, & Co., 23, Red Lion-square, W. C.

Buckinghamshire—Henry Arthur Hoare, Esq., Wavenden House, Bucks.

Undersh., C. W. Powell, Esq., Newport Pagnell.

Deps., Pattison & Wigg, 50, Lombard-street, E. C.

Camb. & Hunts.—Colonel the Hon. Octavius Duncombe, Waresley Park.

Undersh., Francis G. Butler, Esq., St. Neots, Hunts.

Deps., Iliffe, Russell, & Iliffe, 2, Bedford-row, W. C.

Canterbury—Henry Hart, Esq., Canterbury.

Undersh., Allen Fielding, Esq., Canterbury.

Deps., Kingsford & Dorman, 23, Essex-street, Strand, W. C.

Cheshire—Robert Barbour, Esq., Bolesworth Castle.

Undersh., J. Hostage, Esq., Bridge House, Chester.

Deps., Chester & Urquhart, 11, Staple-inn, W. C.

Chester—Charles Dutton, Esq., Chester.

Undersh., J. Hostage, Esq., Bridge House, Chester.

Deps., Chester & Urquhart, 11, Staple-inn, W. C.

Cornwall—John Thomas Henry Peter, Esq., Chiverton.

Undersh., William Shilson, Esq., St. Austell.

Deps., Coode, Kingdon, & Cotton, 62, Ludgate-hill, E. C.

Cumberland—Sir Fred. Ulrick Graham, Bart., Netherby.

Undersh., John Giles Mounsey, Esq., Carlisle.

Deps., Gray & Mounsey, 9, Staple-inn, W. C.

Derbyshire—Sir William Fitzherbert, Bart., Tinsington.

Undersh., { Jos. Challiner, Esq., Leek, Staffordshire.
A. R. Simpson, Esq., Derby. A. U.

Deps., Gregory, Rowcliffe, & Rowcliffe, 1, Bedford-row, W. C.

Devonshire—Sir John Kennaway, Bart., Escot.

Undersh., A. W. Leigh, Esq., Maddock's-row, Exeter.

Dep., George Fluder, 8, Furnival's-inn, E. C.

Dorsetshire—St. John Coventry, Esq., Knowle Wimborne.

Undersh., { Thomas Rawlins, Esq., Wimborne.
Thos. Coombs, Esq., Dorchester. A. U.

Deps., Lovell & Co., 14, South-square, Gray's-inn, W. C.

Durham—William Edward Surtees, Esq., Stockton-on-Tees.

Undersh., Wm. Emerson Wooler, Esq., Durham.

Dep., James Crowdy, 17, Serjeant's-inn, Fleet-street, E. C.

Essex—Arthur Pryor, Esq., Highlands.

Undersh., { Thos. Morgan Gepp, Esq., Chelmsford.
Gepp & Veley, Chelmsford. A. U.

Deps., Hawkins, Bloxam, & Co., 2, New Boswell-court, W. C.

Exeter—George Tucker, Esq., St. David's-hill, Exeter.

Undersh., Wm. Huggins, Esq., St Paul's-street, Exeter.

Dep., Richard Bastard, 25, Philpot-lane, E. C.

Gloucestershire—Sir John Maxwell Steele Graves, Bart., Broadway.

Undersh., J. Burrup, Esq., Berwick-street, Gloucester.

Deps., Thos. White & Sons, 11, Bedford-row, W. C.

Gloucester—Edward Leader Kendall, Esq., Gloucester.

Undersh., Thomas Smith, Esq., Gloucester.

Deps., Rogerson & Ford, 31, Lincoln's-inn-fields, W. C.

Hampshire—Hon. John Thomas Dutton, Hinton House, near Alresford.

Undersh., T. Burnett Woodham, Esq., Winchester.

Dep., Henry Sowton, 6, Great James-street, Bedford-row, W. C.

Herefordshire—Sir Edward Cludde Cockburn, Bart., Penentour Court, Ross.

Undersh., J. F. Symonds, Esq., Bridge-street, Hereford.

Deps., Smith & Guscotte, 19, Essex-street, Strand, W. C.

Hertfordshire—Henry Heyman Toulmin, Esq., Childwicks-bury.

Undersh., { Philip Longmore, Esq., Hertford.
Sworder & Longmore, Hertford. A. U.

Deps., Hawkins, Bloxam, & Co., 2, New Boswell-court, W. C.

Hunt. & Camb.—Col. the Hon. Octavius Duncombe, Waresley Park.

Undersh., Francis G. Butler, Esq., St. Neots, Hunts.

Deps., Iliffe, Russell, & Iliffe, 2, Bedford-row, W. C.

Kent—Thomas Farmer Bailey, Esq., Leigh, Tunbridge.

Undersh., Frederick Scudamore, Esq., Maidstone.

Deps., Palmer, Palmer, & Bull, 24, Bedford-row, W. C.

Kingston-upon-Hull—Frederick Wm. Hudson, Esq., Park-street.

Undersh., W. E. Stead, Esq., 13, Bishop's-lane.

Dep., none appointed.

Lancashire—Sir Elkanah Armitage, Knt., Hope Hall, near Manchester.

Undersh., { Geo. Wm. Maxsted, Esq., Lancaster.
Wilson & Deacon, Preston. A. U.

Deps., Bell, Brodick, & Lambert, Bow-church-yard, E. C.

Leicestershire—Charles Hay Frewen, Esq., Cold Overton Hall, Oakham.

Undersh., { Wm. Latham, Esq., Melton Mowbray.
W. H. Macaulay, Esq., Leicester. A. U.

Deps., Scott & Co., 11, Lincoln's-inn-fields, W. C.

Lichfield—Adrian Shemmonds, Esq., Lichfield.

Undersh., A. Barues, Esq., Market-place, Lichfield.

Dep., T. W. Nelson, 4, Cloak-lane, E. C.

Lincolnshire—Thomas Pilkington, Esq., Lincoln.

Undersh., Alfred Barrand Burton, Esq., Lincoln.

Deps., Stone, Billinghamurst, & Wood, 33, Poultry, E. C.

Lincolnshire—H. R. Boucherett, Esq., North Willingham.
Undershs., { George Saffery, Esq., Market Rasen.
 John Francis Burton, Esq., Lincoln.
 A. U.
Depts., Stone, Billinghamurst, & Wood, 33, Poultry,
 E. C.

London—Sills J. Gibbons, Ald., 253, High-street, Southwark.
Undershs., C. M. M. Rawlins, Esq., 29, Coleman-
 street, E. C.
Dep., Mr. Secondary Potter, 20 & 21, Basinghall-
 street, E. C.

Middlesex—J. Figgins, Esq., Ray-street, Farringdon-road.
Undershs., Henry Duffett, Esq., 63, Chancery-lane,
 W. C.
Depts., Burchell & Hall, 24, Red Lion-square, W. C.

Monmouthshire—Frederick Cotton Finch, Esq., Blaenavon.
Undershs., Edmund Butler Edwards, Esq., Ponty-
 pool.
Depts., Smith & Shepherd, 15, Golden-square, W. C.

Newcastle-upon-Tyne—Henry Angus, Esq., Newcastle.
Undershs., C. Harrison Stanton, Esq., Newcastle.
Depts., Shum & Crossman, 3, King's-road, Bedford-
 row, W. C.

Norfolk—William Amhurst Tyssen Amhurst, Esq., Diding-
 ton Hall.
Undershs., { C. Cheston, Esq., 1, Winchester-build-
 ings, E. C.
 Clement Taylor, Esq., Norwich. A. U.
Depts., Field, Roscoe, Field, & Francis, 36, Lincoln's-
 inn-fields, W. C.

Northamptonshire—Hon. George Wentworth Fitzwilliam,
 Milton.
Undershs., Henry P. Markham, Esq., Northampton.
Dep., Joseph Whitehouse, 48, Lincoln's-inn-fields,
 W. C.

Northumberland—Sir John Swinbourne, Bart., Capheaton.
Undershs., E. Leadbitter, Esq., Newcastle-on-Tyne.
Depts., Shum & Crossman, 3, King's-road, Bedford-
 row, W. C.

Norwich—William Jary Cubitt, Esq., Catton, Norwich.
Undershs., Frederick Thomas Keith, Esq., Norwich.
Dep., C. Blake, 4, Sergeants'-inn, Fleet-street, E. C.

Nottingham—Richard Banks Bond, Esq., Nottingham.
Undershs., Samuel Maples, Esq., Nottingham.
Depts., Taylor, Hoare, & Taylor, 28, Great James-
 street, Bedford-row, W. C.

Nottinghamshire—Sir Edward Samuel Walker, Knt., Berry
 Hill.
Undershs., { Richard Joseph Parsons, Esq., Mans-
 field.
 J. T. Brewster, Esq., Nottingham.
 A. U.
Depts., Taylor, Hoare, & Taylor, 28, Great James-
 street, Bedford-row, W. C.

Oxfordshire—Sir Henry William Dashwood, Bart., Kirk-
 lington Park.
Undershs., John Marriott Davenport, Esq., Oxford.
Depts., Davies, Son, Campbell, & Reeves, 17, War-
 wick-street, W. C.

Poole—Thomas Bellen, Esq., Poole.
Undershs., George Braxton Aldridge, Esq., Poole.
Depts., Skilbeck & Griffith, 34, Bedford-row, W. C.

Rutland—William Wing, Esq., Market Overton.
Undershs., Richard Thompson, Esq., Stamford.
Dep., Richard Henry Peacock, 3, South-square,
 Gray's-inn, W. C.

Shropshire—Thomas Hugh Sandford, Esq., Sandford.
Undershs., { Wm. Lee Brookes, Esq., Whitchurch.
 J. J. Peele, Esq., Shrewsbury. A. U.
Depts., Francis & Bosanquet, 22, Austin-friars, E. C.

Somersetshire—George Bullock, Esq., East Coker.
Undershs., John Nicholls, Esq., South Petherton.
Depts., Dyne & Harvey, 61, Lincoln's-inn-fields,
 W. C.

Southampton—Samuel Michael Emanuel, Esq., Southampton.
Undershs., Coxwell & Bassett, Southampton.
Depts., Marshall, Westall, & Co., 3, Gray's-inn-
 square, W. C.

Staffordshire—Ralph Thomas Adderley, Esq., Barlaston Hall.
Undershs., Robert William Hand, Esq., Stafford.
Depts., T. White & Sons, 11, Bedford-row, W. C.

Suffolk—William Gilstrap, Esq., Fornham, St. Genevieve.
Undershs., James Sparke, Esq., Bury St. Edmunds.
Depts., Aldridge, Bromley, & Thorn, 31, Bedford-
 row, W. C.

Surrey—John Fred. Bateman, Esq., Moor Park, Farnham.
Undershs., Jenkins & Abbott, 8, New-inn, W. C.
Depts., Abbott, Jenkins, & Abbott, 8, New-inn,
 Strand, W. C.

Sussex—John Alexander Hawkey, Esq., Balcombe.
Undershs., John M. Gibson, Esq., 21, Great George-
 street, S. W.
Depts., Palmer, Palmer, & Bull, 24, Bedford-row, W. C.

Warwickshire—Sir R. North Collie Hamilton, Bart., Avoncliff.
Undershs., Thomas Heath, Esq., Warwick.
Depts., Taylor, Hoare, & Taylor, 28, Great St. James-
 street, Bedford-row, W. C.

Westmoreland—Joseph Gibson, Esq., Whelprigg, near Kirkby
 Lonsdale.
Undershs., F. F. Pearson, Esq., Kirkby Lonsdale.
Depts., Loftus & Co., 10, New-inn, Strand, W. C.

Wiltshire—Ambrose Denis Hussey Freke, Esq., Highworth.
Undershs., { Charles Marsh Lee, Esq., Salisbury.
 W. Awdry, Esq., Chippenham. A. U.
Depts., Lewis, Wood, & Street, 6, Raymond-build-
 ings, W. C.

Worcester—John Stallard, Esq., Worcester.
Undershs., S. M. Beale, Esq., 15, Forgate-street,
 Worcester.
Depts., Hancock, Saunders, & Co., 36, Carey-street,
 Lincoln's-inn, W. C.

Worcestershire—Edw. Charles Rudge, Esq., Abbey Manor,
 Evesham.
Undershs., { William A. Syrch, Esq., Evesham.
 Gillam & Sons, Worcester. A. U.
Depts., Iliffe, Russell, & Iliffe, 2, Bedford-row, W. C.

York—Thomas Sanderson, Esq., York.
Undershs., Robert Holtby, Esq., York.
Depts., None appointed.

Yorkshire—Chas. Sabine Aug. Thellusson, Esq., Brodsworth.
Undershs., William Gray, Esq., 75, Petergate, York.
Depts., Bell, Brodrick, & Lambert, Bow-church-
 yard, E. C.

NORTH WALES.

Anglesey—The Hon. Henry Warrender Fitzmaurice, Trengof.
Undershs., John Williams, Esq., Beaumaris.
Depts., Bloxam, Ellison, & Bloxam, 1, Lincoln's-
 inn-fields, W. C.

Carnarvonshire—John Dicken Whitehead, Esq., Glangwna.
Undershs., John Hugh Roberts, Esq., Carnarvon.
Depts., Bloxam, Ellison, & Bloxam, 1, Lincoln's-
 inn-fields, W. C.

Denbighshire—Robert Bamford Hesketh, Esq., Abergelle.
Undershs., Thomas Gold Edwards, Esq., Denbigh.
Dep., Samuel Cook Frankish, 23, Parliament-street,
 W. C.

Flintshire—John C. Jones, Esq., Hartsheath Park, Mold.
Undershs., { Thomas T. Kelly, Esq., Mold.
 Roberts, Kelly, & Keene, Mold. A. U.
Depts., Roberts & Simpson, 62, Moorgate-street, E. C.

Merionethshire—John Corbet, Esq., Ynysymseugwyn.
Undershs., Edward Morgan, Esq., Machynlleth.
Depts., Upton, Johnson, & Upton, 20, Austin-friars,
 E. C.

Montgomeryshire—Edward Hilton, Esq., Rhiewhiriarth,
 Llanfair.
Undershs., Abraham Howell, Esq., Welshpool.
Depts., N. C. & C. Milne, 2, Harcourt-buildings,
 Temple, E. C.

SOUTH WALES.

Breconshire—W. Fuller Maitland, Esq., Garth House, Builth.
Undershs., Evan Vaughan, Esq., Builth.
Depts., White & Sons, 11, Bedford-row, W. C.

Cardiganshire—John George William Bonsall, Esq., Fron-
 fraith, Aberystrwyth.
Undershs., David Howell, Esq., Machynlleth.
Depts., Price, Bolton, & Filder, 1, New-square, Lin-
 coln's-inn, W. C.

Carmarthenshire—T. Charles Morris, Esq., Brynmerddin.
Undershs., George Thomas, Esq., Carmarthen.
Depts., Norris & Allen, 10, Bedford-row, W. C.

Carmarthen—Evan David, Esq., Carmarthen.

Undersh., Lewis Morris, Esq., Carmarthen.

Depts., Chilton, Burton, Yeates, & Hart, 25, Chancery-lane, W. C.

Glamorganshire—William Graham Vivian, Esq., Singleton, near Swansea.

Undersh., Edward Strick, Esq., Swansea.

Depts., Tamplin & Taylor, 159, Fenchurch-st., E. C.

Haverfordwest—J. Dawkins, Esq., Bridge-st., Haverfordwest.

Undersh., William Davies, Esq., Haverfordwest.

Dep., T. H. Smith, 1, Frederick's-place, Old Jewry, E. C.

Pembrokeshire—William Walters, Esq., Haverfordwest.

Undersh., William Davies, Esq., Haverfordwest.

Dep., T. H. Smith, 1, Frederick's-place, Old Jewry, E. C.

Radnorshire—Edward Coates, Esq., Whitton.

Undersh., William Stephens, Esq., Presteign.

Dep., W. W. M. Whitehouse, 26, Charles-street, St. James'-square, W. C.

Imperial Parliament.

HOUSE OF LORDS.—Monday, March 19.

IMPRISONMENT FOR DEBT.

In answer to Lord Stradbroke, who presented a petition on the subject,

The Lord Chancellor stated that it was quite true, that no means were provided by law to release from imprisonment persons incarcerated for non-payment of debts under judgment, in cases of breach of promise and seduction. He would, however, consider the subject with a view to the amendment of the law.

ECCLESIASTICAL COMMISSION.

Earl Russell brought in a bill, which was read a first time, and which was understood to have for its object a change in the constitution of the Ecclesiastical Commission.

HOUSE OF COMMONS.—Thursday, March 15.

THE LEEDS BANKRUPTCY COURT.

Mr. Perrard asked the Attorney-General whether he had seen any grounds for changing his opinion, expressed in this House on the 27th June last, that Mr. Patrick Robert Welch should be suspended from the discharge of his duties as registrar in the Leeds Bankruptcy Court, pending his criminal prosecution for corrupt practices in obtaining, or attempting to obtain, a judicial appointment; if so, to be so obliging as to state them to the House. And whether, after the evidence taken before the select committee on the Leeds Bankruptcy Court, he was of opinion that Mr. John Miller was a fit and proper person to discharge the very responsible duties of chief registrar of the Court of Bankruptcy.

The Attorney-General said his opinion had been expressed in the belief, that the Lord Chancellor had power to suspend Mr. Welch from the discharge of his duty; but on examination of the act of 1861, under which the appointment was made, he found that the office was held on good behaviour, subject to dismissal on the part of the Lord Chancellor, by order, for some sufficient reason set forth in that order, so that it did not appear that the Lord Chancellor had any power of suspension with respect to that office. He need not point out to the House, that as that gentleman was subject to a prosecution, which must be tried in one of her Majesty's courts, it would be impossible to proceed against him on the same grounds, and that was the reason why it had been found impossible to suspend him. If it had been possible, he (the Attorney-General) saw no reason to alter the opinion he had expressed on the subject. With regard to Mr. Miller, he could only say that gentleman held office on the same terms, and, speaking for himself as well as for the Lord Chancellor, he was of opinion that there was nothing in the report of the select committee on the Leeds Bankruptcy Court on which it would be possible to found proceedings, for the purpose of deposing Mr. Miller from the office which he holds.

THE COMPANIES ACT, 1862.

In reply to Mr. H. Seymour;

Mr. M. Gibson said, it was the intention of the Government to bring in a bill to alter the Companies Act, 1862. The provisions of the bill were not yet settled, but he hoped to lay it on the table soon after Raster.

Monday, March 19.

LEGITIMACY DECLARATION, &c., BILL.

Mr. T. Chambers postponed the second reading of this bill to the 10th April.

TENANT RIGHT IN IRELAND.

In reply to a question from Mr. Macquise, Mr. Lawson said, that a measure for the improvement of the law of landlord and tenant was in course of preparation, and he hoped to be able to lay it on the table very shortly after Raster.

COURT OF CHANCERY (IRELAND) BILL.

On the order of the day for resuming the adjourned debate on this bill,

Sir F. Kelly appealed to the Government not to proceed with a bill of that importance at so late an hour (twenty minutes to twelve o'clock), and moved the further adjournment of the debate.

Mr. Whiteside seconded the motion.

The House then divided, when there were—

For the adjournment	..	..	..	55
Against	..	..	..	99

Majority	44
----------	----	----	----	----

The motion was then negatived.

Lord C. Hamilton called attention to the late hour at which it was usual to introduce Irish business into the House: How could they deal with a bill of 193 clauses at ten minutes to twelve at night? The measure involved a gross Government job in the creation of a new Irish legal officer—a Vice-Chancellor—at a salary of 4000*l.* a year. It therefore required the most stringent scrutiny, and should not be forced through the House at an hour when no attention could be given to it. He would, therefore, move that the House should adjourn.

Mr. Lawson denied that the bill was a Government job. It had been framed to carry out the recommendations of a Royal Commission, consisting of the most eminent English and Irish lawyers, who had been appointed to inquire into the best mode of improving the administration of justice in Ireland. It was true that the bill contained 193 clauses, but it had been discussed in the previous session, when the second reading was carried by a large majority. The only principle in the bill was, whether the mode of administering justice in courts of equity in Ireland should be assimilated to that in England.

Mr. Whiteside denied that the authority of the Royal Commission was entitled to the weight attributed to it by the previous speaker.

Mr. Sullivan defended the bill, and said it rested upon the approval of the equity profession in Ireland. The profession were unanimous that the Masters in Chancery ought to be abolished, and that the practice of the law in Ireland ought to be assimilated to that of England. The bill created four places, while it abolished a much larger number. The right hon. and learned member for the University of Dublin in 1856 had introduced a bill proposing to abolish the Masters and to create three Vice-Chancellors.

Mr. George observed, that if time were given for a proper examination of the bill, it could be shewn that it proposed a large increase of expense.

Mr. S. B. Miller complained that, though the inquiry was to ascertain how far the cost to the suitors and the expenditure of public money could be reduced, not a question was asked upon either of those points.

The Chancellor of the Exchequer having agreed to postpone the motion for the second reading until Wednesday, the motion for the adjournment of the House was withdrawn.

Tuesday, March 20.

THE NEW LAW COURTS.

Mr. Torrens wished to know whether it was likely that the Board of Works would take possession of the ground re-

quired for the new law courts this session, or during the present year; whether it would be taken by degrees; and if so, what portion would be required during the present year.

Mr. *Cowper* said that depended on the progress of the negotiations. Some of those negotiations for portions of the property had been very nearly completed, but possession of the ground would not be obtained within a year from the present time, or even for a longer period.

COMMONS—THE METROPOLIS.

Mr. *Cowper*, in moving for leave to bring in a bill to make provision for the improvement of the commons in the neighbourhood of the metropolis, and for their protection from nuisances, said, that within a radius of fifteen miles round the metropolis there were about 180 commons, containing about 10,580 acres. Within that area there was Epsom Downs and Wimbledon-common, the closing of which would almost determine the movements of the metropolitan volunteer corps. In the Inclosure Act of 1845, a distinction was drawn between lands within fifteen miles around London and the lands in the immediate vicinity of large towns in general, and lands more removed from such towns; and it was provided, that with respect to such lands special opportunities should be afforded to Parliament of determining as to their inclosure. It was proposed to renew that provision in the present bill. The bill, among other objects, was designed to enable money to be raised in particular districts for draining the commons, and making them suitable for the purposes of public recreation. There were many lords of the manor and commoners who were prepared to hand over their rights in these open spaces to some organised body, who should be responsible for looking after them in the interests of the public, with the view of preserving them for the benefit of the people. The scheme, if adopted, would make provision for defraying the expense of maintaining the commons. The expenses, in the first place, would be met from local sources; but the bill also granted provision for getting contributions for this purpose from the general funds of the metropolis. The principle, therefore, of the measure was to give organisation to local activity and effort; but as the commons were to be enjoyed by the inhabitants of London at large, it was but fair that they should contribute towards the funds for their maintenance.

Mr. *Powell* thought it would be an improvement were the fifteen miles radius extended to twenty-five.

Mr. *Doulton* said the bill would not meet the requirements that they had in view. The provisions of the measure would leave the matter in precisely the same position as it was now. There was nothing to prevent the shameful inclosures that were now going on round London. The bill had no power to deal with the three most important open spaces, namely, Epping Forest, Hampstead Heath, and Wimbledon Common. The only way to deal with the question was to recognise the rights of the lords of the manors, and to pay for them, so as to leave the land for ever afterwards open for the free enjoyment of the people. He suggested that before the bill was read, a second clause should be added which would recognise the evil and provide a remedy.

Mr. *Locke* said the plan of the hon. member for Lambeth was, a Metropolitan Board of Works to compensate everybody, whether they had any rights or not. That plan was rejected by the committee which sat on the subject. The bill of the right hon. gentleman was founded on the only plan that was adopted by the committee, and it ought to be tried. It was assumed by the hon. member for Lambeth that the rights of lords and commoners were defined rights, to go to a jury upon for compensation. Such rights, however, were ill defined and doubtful, and not of a nature to justify an offer to compensate lords of manors. Let the bill be brought in, and let hon. members make any additions they pleased to give it greater stringency. He did not see why the Government should not give up their manorial rights over the open spaces round London—such, for instance, as Blackheath—in the same way that Mr. Alcock had offered to do. With regard to Epping Forest, the Commissioners of Woods granted licenses by which the forestal rights of the Crown were abandoned—that was to say, they gave people right to build upon portions of the forest, and to encroach upon it as they pleased. When they were establishing a board for the purpose of protecting all the open spaces round the metropolis, they should not forget that the spaces held by the Crown exceeded in

extent all the rest put together. He therefore wished, before the bill was read, to have some expression from the right hon. gentleman as to the course to be pursued by the Crown.

Mr. *Sandford* did not mean to oppose the bill, though it appeared to him to have been framed in complete ignorance of the law. He would ask the right hon. gentleman if he had submitted the bill to the law officers of the Crown. [Mr. *Cowper*,—"No."] He thought so, and the first advice he would give the right hon. gentleman was, to take their opinion before he proceeded any further with the bill. The fact was, that the soil of the commons belonged to the lord of the manor, that the commoners had no absolute right whatever, and that the public who entered upon the commons were mere trespassers. If a lord of the manor desired to enclose a common, the only way of preventing him was by an expensive law-suit, and the commoners, generally speaking, were not in a condition to do so. The bill would be an utter failure, the commissioners to be appointed under it could raise no money, and the whole machinery would necessarily come to a stop. He had no great confidence in the Metropolitan Board of Works, but they were the only board in the metropolis that had the power of raising money, and, for want of a better body, he would suggest that they should be appointed to carry out the duties of commissioners under the bill. The bill as it stood would amount to a complete confiscation of the rights of the lords of the manor.

Mr. *S. Lefevre* did not think it would be desirable to empower either the proposed commissioners or the Metropolitan Board of Works to purchase those commons. The commons in the neighbourhood of London consisted of 10,500 acres, which, for building purposes, would be worth about 300*l.* or 400*l.* per acre, thus involving an outlay of 3,000,000*l.* or 4,000,000*l.*

Mr. *Cowper* stated that with regard to Epping Forest, it was not like the other commons round London, in the meaning of the bill. It was Crown property, administered by the Commissioners of Woods and Forests, who were bound to treat it as a revenue department, and get all they could for it. The same rule applied to Blackheath. He never doubted the right of the lords of the manor to the soil, subject to the rights of the commoners over the surface, and that the public had no legal right to enter upon it. But the object of the bill was to enable the lords of the manors and the commoners, if they were agreed, to raise money upon those commons in order to make improvements; and that money must be raised from those who were neither lords of manors nor commoners. The bill, if it passed, would, therefore, enable parties to obtain acts of Parliament in special cases to carry out the proposed improvements, and which he thought would be better than a uniform act applied to all commons, however varied their circumstances.

After some observations from Mr. *D. Griffiths*,

The *Chancellor of the Exchequer* pointed out to the House that it was an entire mistake to suppose that the rights and interests of the Crown, in respect of the Crown lands, were merely nominal. It was true the reigning Sovereign might have parted with all pecuniary interest in them, but it was equally true that no change could be introduced with respect to them without the previous assent of the Crown; and that the Prince of Wales or any future Sovereign would be perfectly entitled to take the management of these estates into his own hands. With regard to forestal rights, that was a matter which could not be dealt with in a bill like the present, but he hoped that within a few days a proposal might be brought forward by the Government on the subject which would prove generally satisfactory.

Leave was then given to introduce the bill.

INNS OF COURT BILL.

Sir *G. Bonyer* obtained leave to bring in a bill to enable benchers of the Inns of Court to appoint judicial committees in certain cases, and to give the necessary powers to such committees.

The bill was subsequently read a first time.

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THE JURIST.

LONDON, MARCH 31, 1866.

IN claiming special damages as incident to breach of contract, it is always a very difficult question to decide what items of damage are properly referable to the breach of contract alleged and proved; in other words, whether such damage falls within the well-known maxim, "In jure non remota causa sed proxima spectatur." The rule of law with respect to this question enunciated by Alderson, B., in the case of *Hadley v. Baxendale* (9 Exch. 341; 18 Jur., part 1, pp. 358, 359), has been recognised by practitioners as the most satisfactory definition of "proximate special damage." In one or two later cases, however, some of the judges have expressed a doubt, whether the rule referred to is to be considered as applicable in every case of the kind which may arise; we will, therefore, as briefly as possible, notice the decisions on this subject.

Our readers are aware that Baron Alderson, in delivering the judgment of the Court of Exchequer in the case of *Hadley v. Baxendale*, said, that "where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract, should be such as may fairly and reasonably be considered either arising naturally, i. e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it." And the learned judge, in explanation of this rule, said, that if the special circumstances under which a contract was made were communicated by the plaintiff to the defendants, and were thus known to both parties, the damages resulting from the breach of such a contract, which they could reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances, so known and communicated: that, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such a breach of contract: that had the special circumstances been known, the parties might have specially provided for the breach of contract by special terms as to the damages in that case: and that of this advantage it would be very unjust to deprive them. These, therefore, are the principles by which the jury ought to be guided in estimating the damages arising out of any breach of contract. In the case of *Fletcher and Others v. Taylor* (17 C. B. 21), which was an action for the non-delivery of a ship, intended to sail at a certain time for Australia, which the defendant well knew, the learned judge who tried the cause directed the jury in accordance with the rule laid down in *Hadley v. Baxendale*, and the jury found a verdict for the plaintiffs, with damages equal to the difference

between the profits which the ship would have earned, if delivered at the time agreed, and the profits she in fact earned when delivered seven months later, when the freights were much lower. On motion by the defendant to set aside the verdict, on the ground of excessive damages, the Court of Common Pleas refused so to do, and Lord Chief Justice Jervis said, that it would be extremely convenient if there were some general rule as to the measure of damages applicable to all cases of breach of contract, other than that the matter should be left at large, and inquired whether "It might not be, that the breach of a mercantile contract might not be susceptible of estimation according to the average per-centage of mercantile profits, and whether that was not to some extent the result of *Hadley v. Baxendale*." We find the rule in *Hadley v. Baxendale* also commented on in the case of *Smeed v. Foord* (5 Jur., N.S., part 1, p. 291); in that case the defendant agreed to deliver to the plaintiff a thrashing machine within three weeks from the 24th July, but did not do so until the 11th September following; it was proved that the defendant knew that the plaintiff was in the habit of thrashing his wheat out in the field, and sending it off at once to the market. By reason of the non-delivery of the machine, the wheat was obliged to be carried home to be stacked—it was damaged by exposure to the weather; it became necessary to dry it in a kiln—the quality was deteriorated; and lastly, before it could be sold, the market price had fallen. The Court of Queen's Bench held that the plaintiff was entitled to damages in respect of the expense of carrying the wheat home, and drying the same in a kiln, and also in respect of the deterioration in the quality; but was not entitled to damages in respect of the fall in the market price, because it could not be foreseen by the parties that the market price would fall. With reference to this case, it is to be remarked that Lord Campbell strongly concurred in the rule laid down in *Hadley v. Baxendale*, and said, "I take the rule on the subject as correctly laid down in *Hadley v. Baxendale*, that a plaintiff, under such circumstances as these, is entitled to recover either such damages as may fairly and reasonably be considered as arising naturally and in the usual course of things, from the breach of contract or such as may reasonably be supposed to have been foreseen, and in the contemplation of both the parties at the time they made the contract, as the probable result of the breach of it. That rule accords with Pothier, the Code Napoleon, and Chancellor Kent." On the other hand, Crompton, J., said, "It is clear that the damages must be such as arise naturally from the breach of contract; and we cannot complain of the other branch of the rule, viz. that they must be such as may be reasonably supposed to be in the contemplation of both parties at the time they made the contract, because that means what is natural, and what the parties naturally looked for. I only doubt whether there is in these cases an abstract rule of law. In this case the point worth considering is, whether the plaintiff could have got another machine, and if so, Lord Campbell said that might have reduced the damages; it would be for the jury to form their judgment upon that, and

so cut the knot of these difficult cases." (5 Jur., N. S., part 1, p. 293). In the case of *Gee and Others v. The Lancashire and Yorkshire Railway Company* (6 H. & Norm. 211), which was an action in the county court against the defendants for delay in delivering cotton, whereby the plaintiffs' mill was stopped working, and plaintiffs' servants were kept idle (to whom, nevertheless, the plaintiffs were compelled to pay wages), the judge of the county court directed the jury that the plaintiffs were entitled to damages in respect of the loss occasioned by the stoppage of the mill, and also in respect of the payment of wages during such stoppage. On appeal, the Court of Exchequer granted a new trial on the ground of misdirection, for the county court judge ought to have explained the rule of law, as in *Hadley v. Baxendale*, and then left it to the jury to say whether the circumstances of the case came within such rule. Bramwell, B., in giving his judgment in this case, said that the law was laid down correctly in *Hadley v. Baxendale*, and that, to ascertain damage, it would be necessary to find out how much better off the plaintiff would have been if the contract had not been broken, and then, if necessary, to cut the amount down by the limitations of the rule. But Wilde, B., though agreeing with the rest of the Court, said—"For my own part, I think, that although a very excellent attempt was made in *Hadley v. Baxendale* to lay down a rule on the subject, it will be found that the rule is not capable of meeting all cases, and when the matter comes to be further considered, it will probably turn out that there is no such thing as a rule as to the legal measure of damages applicable to all cases." The latest case on the subject is that of *Wilson v. The Newport Dock Company* (12 Jur., N. S., part 1, p. 223), argued last Hilary Term, where it appeared that the defendants promised the plaintiff that, in consideration that the plaintiff would bring his ship to the defendants' dock at a certain time, the defendants would dock her therein, and that the plaintiff brought her to the dock at the time appointed, but that the defendants, by reason of the chain of the dock-gate being broken, were unable, and refused, to admit the plaintiff's ship into the dock, and thereby she grounded outside the dock when the tide ebbed, and was much damaged. There was conflicting evidence as to the ship remaining in the river opposite the dock-gate until she grounded. The jury were asked, first, whether there was a place of safety to which the ship could have been taken before the tide ebbed; and, secondly, whether the captain and pilot of the ship did the best they could under the circumstances, and whether either of them was guilty of negligence. The jury could not agree as to the first question, but as to the second replied, that neither the captain nor the pilot was to blame. This, as Pollock, C. B., afterwards said, was an inconsistency, and only amounted to this—"We cannot agree as to the liability of the defendants, but we desire to throw no blame on the captain or pilot." By the direction, however, of the learned judge who tried the cause, a verdict was entered for the plaintiff (the damages having been agreed to be referred), with leave for the defendants to move to set aside the verdict. The defendants moved accordingly, and the majority of the

Court of Exchequer (Pollock, C. B., Channell, B., and Pigott, B.) were of opinion that, without more assistance from the jury, the case was not ripe for their decision, for the finding of the jury was not sufficiently definite as to whether or not negligence was to be imputed to the plaintiff's servants in not removing the ship from the defendants' docks on finding that the defendants could not admit the ship. On the other hand, Martin, B., thought that the learned judge was right in his direction to the jury, and that *Hadley v. Baxendale* was no authority whatever as to the case then before the Court. He also expressed an opinion that the views of Crompton, J., in *Smeed v. Foord*, and of Wilde, B., in *Gee v. The Lancashire and Yorkshire Railway Company*, were sounder expositions of the law as to remoteness of damage, than those expressed in the judgment of Baron Alderson in *Hadley v. Baxendale*.

These, then, are the judgments to which we above referred, as expressing a doubt as to the adaptability of the rule in *Hadley v. Baxendale* to all cases of breach of contract. The view, however, of Lord Chief Justice Jervis, with respect to the establishment of a general rule as to the measure of damages in all such cases, has much to recommend it; and such a rule having been laid down in *Hadley v. Baxendale*, and being admitted a sound and sensible rule, it seems inexpedient to depart from it, more especially as it is strictly analogous to the rule adopted in cases of tort, as enunciated by Pollock, C. B., in *Rigby v. Hewit* (5 Exch. 243), as follows:—"Every person who does a wrong is, at least, responsible for all the mischievous consequences that may reasonably be expected to result under ordinary circumstances from such misconduct." We submit that the doubt entertained by the learned judge above mentioned, with regard to *Hadley v. Baxendale*, attaches not to the adaptability of the general rule to every case, but to the manner of its application. No doubt it is far easier to lay down a general proposition than to apply it to the circumstances of a particular case. But as the question of damages rests entirely with the jury, it may fairly be left to them, having the rule stated to them for their guidance, to apply it to the facts, and estimate the amount of damages in the particular case before them.

A general rule, an abstract definition as to what is proximate special damage, is established, and is recognised as correct by a large majority of the learned judges; therefore, in each case of breach of contract that may arise, it is the duty of the judge to explain such rule to the jury, and it is the duty of the jury to say whether the facts bring the case within the rule so laid down, and estimate the damages accordingly.

Court Papers.

EQUITY SITTINGS, EASTER TERM, 1866.

Before the LORD CHANCELLOR.

At Westminster.

Monday .. April 16 Appeal Motions and Appeals.

At Lincoln's Inn.

Tuesday..... 17 Appeals.

Wednesday 18 { Petitions, Appeals in Bankruptcy, and

Appeals.

Thursday 19 Appeal Motions and Appeals.

Friday 20

Saturday 21 } Appeals.

Monday..... 23

Tuesday..... 24

Wednesday 25 Appeals in Bankruptcy and Appeals.

Thursday 26 Appeal Motions and Appeals.

Friday .. April 27	} Appeals.
Saturday 28	
Monday 30	
Tuesday May 1	} Appeals in Bankruptcy and Appeals.
Wednesday 2	
Thursday 3	
Friday 4	} Appeals.
Saturday 5	
Monday 7	
Tuesday 8	} Petitions and Appeals.

N. B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

Before the LORDS JUSTICES.

At Westminster.

Monday .. April 16 Appeal Motions.

At Lincoln's Inn.

Tuesday 17	} Appeals.
Wednesday 18	
Thursday 19	
Friday 20	} Appeal Motions and Appeals.
Saturday 21	
Monday 23	
Tuesday 24	} Petitions in Lunacy, Appeal Petitions, and Appeals.
Wednesday 25	
Thursday 26	
Friday 27	} Appeals from the County Palatine of Lancaster and Appeals.
Saturday 28	
Monday 30	
Tuesday May 1	} Appeals.
Wednesday 2	
Thursday 3	
Friday 4	} Appeal Motions and Appeals.
Saturday 5	
Monday 7	
Tuesday 8	} Petitions in Lunacy, Appeal Petitions, and Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Westminster.

Monday .. April 16 Motions and General Paper.

At Chancery-lane.

Tuesday 17	} General Paper.
Wednesday 18	
Thursday 19	
Friday 20	} Motions and General Paper.
Saturday 21	
Monday 23	
Tuesday 24	} General Paper.
Wednesday 25	
Thursday 26	
Friday 27	} Motions and General Paper.
Saturday 28	
Monday 30	
Tuesday May 1	} Petitions, Short Causes, Adjourned Summons, and General Paper.
Wednesday 2	
Thursday 3	
Friday 4	} General Paper.
Saturday 5	
Monday 7	
Tuesday 8	} Petitions, Short Causes, Adjourned Summons, and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Westminster.

Monday .. April 16 Motions.

At Lincoln's Inn.

Tuesday 17	} General Paper.
Wednesday 18	
Thursday 19	
Friday 20	} Motions, Adjourned Summons, and General Paper.
Saturday 21	
Monday 23	
Tuesday 24	} Petitions, Adjourned Summons, and General Paper.
Wednesday 25	
Thursday 26	
Friday 27	} Short Causes, Adjourned Summons, and General Paper.
Saturday 28	
Monday 30	
Tuesday May 1	} General Paper.
Wednesday 2	
Thursday 3	
Friday 4	} Motions, Adjourned Summons, and General Paper.
Saturday 5	
Monday 7	
Tuesday 8	} Short Causes, Adjourned Summons, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir JOHN STUART.

At Westminster.

Monday .. April 16 Motions.

At Lincoln's Inn.

Tuesday 17	} Causes.
Wednesday 18	
Thursday 19	
Friday 20	} Motions and Causes.
Saturday 21	
Monday 23	
Tuesday 24	} Petitions and Causes.
Wednesday 25	
Thursday 26	
Friday 27	} Short Causes and Causes.
Saturday 28	
Monday 30	
Tuesday May 1	} Causes.
Wednesday 2	
Thursday 3	
Friday 4	} Motions and Causes.
Saturday 5	
Monday 7	
Tuesday 8	} Petitions and Causes.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

Before the Vice-Chancellor Sir W. P. WOOD.

At Westminster.

Monday .. April 16 Motions.

At Lincoln's Inn.

Tuesday 17	} General Paper.
Wednesday 18	

Thursday .. April 19	Motions and General Paper.
Friday	20 General Paper.
Saturday	21 { Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	23
Tuesday	24 { General Paper.
Wednesday	25
Thursday	26 Motions and General Paper.
Friday	27 General Paper.
Saturday	28 { Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	30
Tuesday May 1	{ General Paper.
Wednesday	2
Thursday	3 Motions and General Paper.
Friday	4 General Paper.
Saturday	5 { Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	7 General Paper.
Tuesday	8 Motions and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

PROSPECTUS OF THE LECTURES

To be delivered during the ensuing Trinity Educational Term, by the several Readers appointed by the Inns of Court.

CONSTITUTIONAL LAW AND LEGAL HISTORY.

The Reader on Constitutional Law and Legal History will deliver Six Public Lectures on the History of the English Law and of the Constitution, from the Restoration to the death of Queen Anne.

With his Private Class, the Reader will go through the principal Statutes, State Trials, and other State Documents, from 1679 to 1713, and will use Hallam's Constitutional History as his chief Text-book.

EQUITY.

The Reader on Equity proposes to deliver, during the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

An Elementary Course.

1. On Relief in Equity against Penalties and Forfeitures.
2. On the Nature of Legal and Equitable Mortgages.
3. On Suits for Redemption and Foreclosure.

An Advanced Course.

1. On the Jurisdiction in Lunacy.
2. On the Jurisdiction over Infants.
3. On Bankruptcy.
4. On Equitable Relief in Cases of Accident.
5. On Relief against Transactions tainted with Illegality, as opposed to Public Policy.

In the Elementary Private Class, the subjects discussed will be—The Equitable Incidents to the Relation of Principal and Surety, and the Principles of Equity Pleading.

In the Advanced Private Class, the Lectures will comprehend—The Rules for determining the Priority of Incumbrances: Conclusion of Course on Pleading and Evidence in Courts of Equity.

THE LAW OF REAL PROPERTY, &c.

The Reader on the Law of Real Property, &c., proposes to deliver, in the ensuing Educational Term, Twelve Public Lectures (there being Six in each Course), on the following subjects:—

Advanced Course.

1. The Specific Performance of Contracts.
2. The Law of Life Assurance.

Elementary Course.

The Proprietary Rights of Husband and Wife.
The Reader will, with his Elementary Private Class, continue his course of Real Property Law, using the work of Mr. Joshua Williams as a Text-book; and to the Advanced Private Class, the Reader will explain the operation of the Fines and Recoveries Abolition Act, using Lord St. Leonards' and Mr. Shelford's Editions of the Real Property Statutes as Text-books.

JURISPRUDENCE, CIVIL, AND INTERNATIONAL LAW.

The Reader on Jurisprudence, Civil, and International Law proposes, in the ensuing Educational Term, to deliver Six Public Lectures on the following subjects:—

1. The Doctrines of International Law with respect to Commercial Blockade, and the expediency of the amendment thereof.
2. The Roman Law relating to Husband and Wife, compared with the English and French Law upon the same subject.
3. The Power of the Father over the Person and Property of his Child, by the Roman, French, and English Systems of Law respectively.

In his Private Classes, the Reader proposes to discuss the Roman Law with respect to Actions, Interdicts, and Evidence, calling attention to the English Law upon the same heads.

The Reader, in his Private Class, will also discuss points of International Law with respect to the International Rights of States in their Hostile Relations, using the work of Wheaton as the Text-book, and referring to the works of the principal modern Jurists, the decisions of the Admiralty and Prize Courts of England and America, the Debates in Parliament, and State Papers relating to the matters under discussion.

COMMON LAW.

The Reader on Common Law proposes to deliver, during the ensuing Educational Term, Two Courses (of Six Public Lectures each) on Criminal Law and the Law of Evidence, in which the subjects treated will be as under:—

Elementary Course.

1. Proceedings before Commitment of the Accused.
2. Proceedings preparatory for Trial, including the Structure of the Bill of Indictment.
3. Proceedings at the Trial, whether at Quarter Sessions or at the Assizes.

In treating of the above subjects the *modus probandi* will, when opportunity offers, be considered; also the Rules of Evidence ordinarily applied in Criminal Procedure.

Advanced Course.

1. Our existing Courts of Criminal Jurisdiction—whence they originated—what Powers they possess.
2. Rules of Evidence recognised and Proofs admissible in Criminal Courts.
3. Provisions of the Criminal Law Consolidation and Amendment Acts having Reference to ordinary Offences.

With his Private Classes, the Reader will discuss the Subjects above set forth, in the order stated, exemplifying his remarks by reported cases, and by extracts from the books below mentioned:—

Elementary Class.—Paley on Convictions; Archbold's Criminal Pleading (last ed.); and Roscoe on Evidence in Criminal Cases.

Advanced Class.—Blackstone's Commentaries (21st ed.); Taylor on Evidence (last ed.); and Greaves's Criminal Law Consolidation and Amendment Act.

EXAMINATION ON THE SUBJECTS OF LECTURES AND CLASSES.

The Examinations for Exhibitions on the subjects of Lectures and Classes delivered in the three Educational Terms, 1865-6, will commence on Monday, the 2nd July, at Lincoln Inn Hall.

Students who propose offering themselves for Examination must enter their names on or before Friday, the 1st June next, at the Steward's Office, Lincoln's Inn; and a Reader's Certificate of having duly attended the Lectures and Classes, on the subjects in which a Student offers himself for Examination, must be sent to the Council of Legal Education, at Lincoln's Inn, on or before Monday, the 18th June.

Students having duly attended the Lectures and Classes of one or more of the Readers from the Michaelmas Term preceding the July Examination, are qualified to enter for Examination on such subjects, but they are not allowed to enter for the Elementary and Advanced Examination on the same subject, and provided that the terms they have kept do not exceed the limits prescribed by clause 39 of the Consolidated Regulations of the Inns of Court.

Students who have passed an Examination under the 44th clause, are not eligible to enter for the July Examination under the 38th clause of the Consolidated Regulations.

Students who have obtained Exhibitions under clause 38 are not eligible to enter again at a subsequent Examination on the same subjects.

The Examinations for the Exhibitions will be partly oral and partly in writing, by means of printed papers of questions.

The following Days and Hours have been set apart for the said Examination.

Monday Morning, the 2nd July (9:30 to 12:30), Constitutional Law and Legal History.

Monday Afternoon, the 2nd July (1:30 to 4:30), Jurisprudence, Civil, and International Law.

Tuesday Morning, the 3rd July (9:30 to 12:30), on Equity.

Tuesday Afternoon, the 3rd July (1:30 to 4:30), on the Common Law.

Wednesday Morning, the 4th July (9:30 to 12:30), the Law of Real Property.

Wednesday Afternoon, the 4th July (1:30 to 4:30), a Paper composed of three Questions on each of the foregoing Subjects of Examination.

By order of the Council,

WESTBURY, Chairman.

Council Chamber, Lincoln's Inn,
March 5, 1866.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, March 22.

Lord St. Leonards introduced a bill to facilitate arbitration between employers and employed. It is similar in principle to the measure which he brought in last year.

The bill was read a first time.

TITLE AND LAND DEBENTURES (IRELAND) ACTS, 1865.

The Earl of Belmore presented a petition from the grand jury of the county of Sligo, praying for greater facilities under the Record of Title and Land Debentures (Ireland) Acts, 1865; and moved for copies of the correspondence between the Lord Chancellor of Ireland and the judges of the Landed Estates Court and the Treasury, with reference to the appointment of clerks in the Record of Title Office, and of the report of Messrs. Huguenin and Law (if any) on the subject. He also moved for the production of a memorial from the Land Registration of Title Association.

Lord Dufferin said that it was impossible for the Government to give any immediate reply to the petition referred to by the noble Lord, as it had only recently been brought under their consideration. It would, however, receive their earnest and careful attention. He could not produce any of the papers asked for, except the last one.

The memorial of the Irish Registration of Title Association was ordered to be laid on the table.

Friday, March 23.

CAPITAL PUNISHMENT.

The Lord Chancellor introduced a bill to amend the law relating to capital punishment, founded on the report of the capital punishment commission. He proposed that the bill should be read a second time on the 17th April.

The bill was then read a first time.

RAILWAYS.

Lord Redensdale called the attention of the House to the fictitious character of the financial arrangements for the construction of railways by almost all new companies, and by many already established, and to the manner in which public interests and those of landowners, railway proprietors generally, and of the holders of railway companies' mortgages and debenture stocks, are thereby affected; and to move that the report from the select committee, to whom the Cork and Youghall Railway Bill was referred, be printed. He said, that in the early days of railways, they were commenced by a subscription contract for a large part of the capital required. Ultimately, these contracts were found to be so useless, that Parliament ceased to exact them, and resolved to rely, for proof of the bona fides of the undertaking, upon a deposit of 81. per cent. on the required capital. It was supposed and intended, that this deposit should be made out of capital available for the construction of the line. That had now ceased altogether to be the case. The deposit was borrowed at a high rate of interest, and was, in fact, worse than useless. The way in which capital could now be raised under these Lloyd's bonds was a great inconvenience, more especially as there was some doubt whether a person who had obtained a judgment on such a bond would not be allowed to rank against the estate of the company on an equality with, if not in priority to, the mortgagees having a parliamentary title. The result of that was to shake the validity of these securities, which were now so much resorted to for the investment of trust funds. There were, in point of fact, all sorts of tricks going on in connexion with these securities; and it was absolutely necessary that Parliament should take some steps to place them on a solid foundation, and to protect the public against the frauds which were continually being practised upon them. He believed that the existing system, under which railways were constructed by contractors, was now breaking down, and that it could not be carried on much longer. No arrangement for amalgamation ought to be allowed, unless the terms of the arrangement were inserted in the bill. After recommending that contractors should not be allowed to have any influence on railway boards, that the number of directors on these boards should be reduced, and that the management of the lines should be intrusted to a small number of men, who should be highly paid, and should be expected to devote their whole time to the business, the noble Lord said, that he believed that the very largest company might be directed by six or eight men. And he should, after Easter, submit to the House certain alterations in the standing orders, which would, in his opinion, tend to attain that result. The noble Lord concluded by moving, that the report of the Cork and Youghall Railway should be printed.

The motion was agreed to.

THE ECCLESIASTICAL COMMISSION BILL was read a second time.

THE IRISH LAND QUESTION.

The Marquis of Clanricarde called the attention of the House to the law relating to the tenure and improvement of land in Ireland. The bill which he was now asking leave to introduce was based upon the same principles as one which he introduced in 1853.

Lord Dufferin said that the Government intended to introduce into the House a bill for the amendment of the law

of landlord and tenant in Ireland. The Government had no objection to the introduction of the bill of the noble Marquis. The bill was read a first time.

HOUSE OF COMMONS.—Thursday, March 22.

THE BUILDING OF THE NEW LAW COURTS.

Mr. *Bentinck* moved that in the opinion of this House it was not expedient that the competition for the building of the new courts of justice should be limited to six architects only.

After some observations by Mr. *B. Hope*,

Mr. *Copper* said, that the opinion of the House could have no effect upon the question under discussion, because Parliament had agreed to a bill called the Courts of Justice Act, by which the decision upon the plans and the style of building were to be determined by the Treasury, with the advice of certain commissioners. Parliament having, by adopting that act, placed the responsibility of selecting the architect upon the Treasury and the Commissioners, it was scarcely possible now to alter the arrangement. He hoped, therefore, that the motion would not be pressed.

Mr. *Powell*, Sir *G. Bowyer*, Mr. *Tite*, Mr. *B. Cochrane*, and Mr. *Locke* spoke on the motion.

The Attorney-General said, he believed the body of architects were themselves of opinion that it would be absolutely necessary for those who were to compete to have access to the different courts and offices where the business of the law was now carried on. It would be impossible to give effect to such a conclusion if the competition was to be unlimited. The gentlemen whose services had been invited were the following:—Mr. *Street*, Mr. *Waterhouse*, Mr. *Garling*, Mr. *Deane*, Mr. *Raphael Brandon*, and Mr. *Somers Clarke*. All of these, with the exception of the last, had accepted the offer made to them; and as regarded the last, the offer to him had not been as yet determined upon. Mr. *Scott*, Mr. *Hardwicke*, Mr. *C. Barry*, and Mr. *Wyatt* had declined to compete, on account of the pressure of private engagements. Considering that the successful architect would receive 5l. per cent. on the estimates, which would amount to a sum of 37,000l., it was not unreasonable to require, that during the three years the work was being carried on, that the architect should renounce all private engagements. There was not the smallest foundation for the report that the commissioners had already determined to appoint Mr. *Waterhouse* as their architect. That gentleman had been selected as one of the competitors simply because he was known to have been most successful in erecting a building of the same kind at Manchester; but he was not aware that Mr. *Waterhouse* was personally known to any one of the commissioners.

Mr. *Hibbert* said that the competition was unlimited. Some 230 designs were sent in, but of these not more than twenty were worth looking into, and out of the twenty only ten were selected from which to draw the best design. In the construction of the Manchester courts the magistrates, attorneys, and all who were to use the courts were consulted, and it was on that account that they afforded such satisfactory accommodation.

Mr. *Henley* was afraid the Government had pursued the very worst course in the matter. They should either have selected one person, upon their own responsibility, to do the work, or have thrown it open to general competition. But by the present arrangement no one would be responsible, while there would be plenty of dissatisfaction, in whatever way the work was executed.

After a few words from Mr. *H. B. Sheridan*, the House divided—

For Mr. Bentinck's motion	101
Against	70
Majority	—31

THE MERCHANT SHIPPING ACT (1854) AMENDMENT BILL was read a second time.

MASTER AND SERVANT.

On the motion of Lord *Elcho*, the select committee on the law of master and servant was reappointed.

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THE JURIST.

LONDON, APRIL 7, 1866.

THE JAMAICA COMMISSION.

THE proceedings under the Jamaica Commission have come so nearly to a conclusion, that it may be of interest to notice some of the more important general questions which its constitution and its proceedings appear to raise, and the bearing which the general result of the evidence taken has upon those questions.

First in order comes the important question as to the nature of the commission itself in a constitutional or legal point of view. It may be remembered that two very high authorities in the House of Lords (the Earl of Derby and Lord Chelmsford) intimated grave doubts as to the constitutional question. And the importance of this question has been made more apparent by what has since been disclosed. We observe (see the *Morning Star* of the 19th January) that in the letter of instructions furnished by the solicitors of the Jamaica committee, to the two gentlemen who have been sent to Jamaica to assist in the inquiry which has been intrusted by Government to the Royal Commissioners, there is a distinct direction to get up proofs against Governor Eyre and his subordinate officers, upon which the committee may ground criminal proceedings against all among them who can be implicated before "the grand jury of the county of Middlesex (England), under the 42 Geo. 3, c. 85." The two agents of the committee are, moreover, expressly enjoined to guide their action by the opinion of Messrs. James & Stephen; the effect of which was, that under martial law all that can be done is to resist actual outrage or rebellion; and that all the trials by courts martial for offences previously committed would, of course, be illegal—an opinion which we controverted in our former article on the subject. And the agents are to transmit home in the usual way as soon as possible all the evidence of acts of cruelty and illegality they can collect, sufficient to justify either indictments or actions.

We first, then, observe that the commissioners distinctly named to the various persons implicated in the proceedings, that though they were not bound to answer any questions tending to criminate them, yet, if they *did* answer, their statements might be hereafter used in evidence against them—a distinct avowal of the possibility of future legal proceedings; in which, then, evidence obtained before the Royal Commission might be used against them. And we further observe, that the Provost Marshal, after his examination, was actually arrested and charged with murder.

What were the views with which the commission was issued by the Government may best be judged by the official letters of the Secretary of State. In his letter to the Governor demanding explanation, he expressly declared "that the Government desired to see it 'clearly established,' that no persons had been executed unless crimes had been proved in evidence against

them which deserved death." And in his letter to the Governor announcing the commission, he stated "that the Government desired that the result would be to satisfy them on the points on which it was necessary to be satisfied, and to vindicate the character and conduct of those who had taken part in the proceedings." From which, putting the two letters together, it is clear that the Government desired "proof," and deemed that those implicated must feel it due to their own character to give evidence. Accordingly, they have all done so, and, under this kind of moral compulsion, have made the fullest disclosures of their acts; all of which may be given in evidence against them in any criminal proceedings that may be adopted. And this, after an act of indemnity.

It is a most important question whether this is constitutional? That is, whether it was right for the Crown to issue an extraordinary commission of inquiry into the conduct of those who had acted under lawful authority, and who would thus be compelled (unless they allowed all charges against them to pass unanswered) to give evidence with the distinct view that, notwithstanding the act of indemnity, such evidence might be used against them in criminal proceedings in this country; and further, under this commission, to call upon them to furnish *legal* proof (for so the commissioners have understood it), that *legal* proof clearly establishing the guilt of persons executed by them under the lawful authority of law martial, which does *not* require strict legal proof. This, we repeat, is a most momentous question; the importance of which, with a view to the welfare of our many colonial or foreign dependencies, it is scarcely possible to exaggerate.

It is obvious that, under such a proceeding, those in authority in such colonies will have to act under one law, and be judged by another! That is, they will be called upon on cases of emergency to proclaim and act upon martial law, which, as Lord Hale and Hallam lays down, involves the suspension of ordinary law, and, therefore, of the rules of legal proof; and they will be liable afterwards, and by means of evidence obtained under an extraordinary commission of inquiry, to be judged by that very ordinary law which martial law dispenses with and suspends! Can this be legal? Can it be constitutional? Is it reconcilable with good sense, with common justice, with sound principles?

In our former article on the subject we endeavoured to establish what those principles were, and certainly with those principles this course is not reconcilable. It would have been quite competent for the Crown to issue a commission of inquiry for its own information, carefully providing by an act of this country against any legal use to be made of disclosures thus obtained; for there might be matter for censure in errors of judgment, not the proper subjects of criminal procedure. But the Crown should have left those who contemplated criminal proceedings in this country to their own resources, and their own means of inquiry, and not have assisted them by an extraordinary commission of inquiry available for their own purposes.

Inquisitions, especially *criminal* inquisitions, are odious to our law and constitution. The coroner's inquisition may, it is true, result in the committal of a particular person for trial, but then it is, as all criminal procedure essentially and constitutionally is, *local* in its character, and also thoroughly *popular*. The coroner's jury is a *local* tribunal, and a popular tribunal, and therefore thoroughly constitutional. But here there is an inquisition by an extraordinary commission from the Crown superseding the ordinary tribunals of the land, and even overriding the local Legislature, which, by an act of indemnity, had expressly legalised the proceedings taken for the suppression of the rebellion. And was ever such a commission issued in this country or in Ireland, even under circumstances *infinitely* more momentous? In the Lord George Gordon riots, as Mr. Adolphus states in his History (vol. 3, p. 252), the official returns disclosed that about 450 were killed and wounded by the troops; and he adds that this return is *undoubtedly defective*, "as many dead and wounded were removed by their friends;" so that (curiously enough) the probable number of the *killed*, as nearly as can be calculated, fully equalled the largest number of the negroes estimated to have been killed in Jamaica; yet there was no commission of inquiry issued, and the people were left to their ordinary remedy by coroner's inquest or indictment. And this parallel is the more remarkable when it is borne in mind that in the Lord George Gordon riots no *lives* were taken by the mob; it was a mere matter of plunder, and injury, not to life, but property; whereas the Jamaica rebellion commenced with a cruel massacre, in which some 700 or 800 were massacred; and the negroes for several days—for nearly a fortnight—continued their *endeavours* to carry out an evident object of killing the white people, and for all that time were, in parties of armed men, wandering about burning houses and seeking white people to massacre. As nearly as can be calculated, only about half the number of those who were actually present at, and aiding and abetting in, the massacre (all of whom were legally guilty of murder) were killed; and there is no precedent in this country for a commission of inquiry on such grounds. Nay, further, there are precedents in England or Ireland of the superior courts or the Legislature actually interposing to quash and put a stop to even the *ordinary* legal proceedings in cases where persons have been killed under lawful authority, on occasions of riot or rebellion. Without referring to the Irish acts, we may recal to recollection the *Six-mile Bridge case*, above fourteen years ago, where the Court of Queen's Bench in Ireland quashed the proceedings on a coroner's inquisition against soldiers who, on the occasion of an election riot, had fired on the mob, under the orders of their officers; and certainly there is no precedent that we are aware of for suspending the ordinary tribunals, and affording an *extraordinary* remedy as *against* those who have acted under lawful authority. Assuming martial law to have been lawfully proclaimed—which is the primary and fundamental question—then it was as much (as we shewed in our former article) legal and lawful as the ordinary law

of the country, and those who acted under it would be entitled to the ordinary presumption in favour of those who acted under lawful authority; and the *onus* would be on their accusers and assailants to make out against them a case of reckless excess, not upon the authorities to make out that they did what they were justified in doing. Therefore, there is in such cases no just reason for assisting the accusers in any extraordinary way to make out their case, especially by means of self-condemnation.

We are quite aware that it is contended by some, and this is, indeed, the essence of the opinion above alluded to—that martial law, even assuming it lawfully proclaimed, only justifies resistance to actual outrage or insurrection, and would not justify trials for offences already committed. But that this is not so, we shewed in our former article, and it is manifest that it was not the view of the Chief Justice of Jamaica and the Attorney-General of the island, the latter of whom has been largely examined on the legal question; nor does it appear to be the view of the commissioners, for they have gone fully into the question of the *fairness* of those trials. Neither does it appear to be the view of the counsel for the Jamaica committee (i. e. the assailants); for we observe, that their case was, that the authorities' officers or soldiers acted "under colour of martial law," i. e. (as we presume) in *abuse* of it, and not really under its authority.

Let us look at the two great fundamental questions involved in the inquiry—first, the authority to proclaim martial law; secondly, what is involved in martial law? In a legal point of view, the evidence of the Attorney-General is, of course, of much interest; but, except as to the *local* law, it adds nothing on the general *law* of the subject to what was stated in our former article. Indeed, it is curious, that he is under the same error that we then pointed out, viz. that the Petition of Right abolished the power of proclaiming martial law, whereas it was only in *time of peace*. He, therefore, being under that erroneous impression, took two grounds to justify the proclamation of martial law—first, that the Petition of Right only applied to the realm of England, and not to a colony like Jamaica (in which probably he is right); and, secondly, that the local statutes justified it. And it appears, that there is on the statute-book of Jamaica an act of 33 Car. 2, c. 31 (passed in 1681), which provides, "that upon any apprehension and appearance of any public danger or invasion, the Commander-in-Chief do forthwith call a council of war, and, with their advice and consent, cause and command the articles of war to be proclaimed, from which publication martial law is to be enforced; and that then it shall be lawful for the Commander-in-Chief to command the persons of any of her Majesty's liege people, as also their negroes, for all such services as may be for the public defence, and generally to act and do, with all full power and authority, *all such things as he and the council of war shall think necessary and expedient* for her Majesty's service, and the defence of the island."

This, we conceive, is declaratory of the common law of England, since it fully accords with Hale's defini-

tion of martial law, as vesting an entirely absolute discretion in the military authorities, when once it is proclaimed by the Governor in Council. The Attorney-General states, that not only is the act not repealed, but that it has been recognised and continued by a long series of acts down to the present time. And he further states, that the Governor proclaimed martial law in entire accordance with this act, by the advice and assent of his council; and that he did so with the entire concurrence of men of all parties. "I may say positively, that there was not *one dissenting voice against proclaiming martial law over the area comprised in the proclamation*," which was the county of Surrey, chiefly composed of the large parish of St. Thomas's. Indeed, he adds, that some ordered it to be proclaimed *all over the island*; and the Commander-in-Chief desired Kingston to be included, which was not acceded to only on account of the inconvenience it might occasion to commerce. It seems, therefore, beyond a doubt, that the proclamation of martial law was perfectly legal, and also perfectly proper and politic.

And we observe, that when the Attorney-General was asked about the continuance or duration of martial law, he said emphatically, "It is allowed to take its own duration; *it is not a question of law, but of policy*." This, again, entirely accords with our own view of the law; and it is evident (which is far more important) that it accords with the views of the framers of the Jamaica martial law statute; for that contains no provision as to the continuance or close of martial law when once legally proclaimed, but leaves it generally to the Governor to take such measures, and for so long as he and his council deem necessary and expedient. We may add, that the Chief Justice was present at the council, and was specifically and personally appealed to by the Governor, to explain the effect of proclaiming martial law, and the results which it involved; and he entirely concurred in the propriety of the proclamation of martial law. The chief legal authorities in the island, therefore, supported by the local statutes, took the same view of the law on the subject as that which we have all along ventured to present on this, the first and primary point.

So again, the Attorney-General, it is evident, took the same view as we do of the effect of proclaiming martial law. He treated it as recognising, affirming, and involving a *state of war*. "We treated the men taken," he said, "*as belligerents, and as rebels breaking the law*." There was," he said, "*a necessity for proclaiming martial law; and it involved a state of war*." This is the substance of his evidence. And as to what this meant, he personally shewed, by sitting on a court martial, which sent several men to death. "They were all tried," he said, with reference to the massacre and outrages a few days before. "We were satisfied of their guilt." That is all he deemed material. He says not a word about legal evidence; on the contrary, he avows that he acted on evidence not strictly legal. "I saw," he said, "a copy of Bogle's letter. I had a letter from a respectable man I knew, describing what had taken place," &c. The means by which he was satisfied he deems not now material; it

is enough, in his opinion, that he and his brethren were all *satisfied* of the guilt of the persons they sacrificed. That is *his* view of martial law. And we confess, it very much agrees with our own, for this obvious reason—that otherwise martial law would not only come to nothing, but would be a positive snare. If strictly legal evidence were necessary, the great objects of martial law would fail; and if strictly legal evidence is not necessary, all that can be required is, that, on a fair trial, persons of position and character shall be *satisfied* of the guilt of the persons accused. If after this their decision is to be subject to review and reversal by persons who require legal evidence, it is obvious that no one would ever sit upon a court martial at all, and the proclamation of martial law would be nugatory. Moreover, it will be observed, that the Attorney-General evidently not only has no doubt, but has no *idea* of any doubt, that the proclamation of martial law gives power to try prisoners by court martial for outrages or offences against martial law; that is, acts of murder or rebellion previously committed, and is not limited (as some lawyers have imagined) to the mere *resistance* of acts of outrage or rebellion. Nay, further, it is evident that it never occurred to him to doubt that the court martial might try prisoners for acts of outrage committed in the proclaimed district before the proclamation of martial law. For all the persons he tried by court martial—and, indeed, almost every person tried by court martial—were tried for offences committed *before* the proclamation. Most of them were tried for participation in the original massacre, which was several days before the proclamation. The Attorney-General evidently had no doubt, nor any *idea* of doubt, on that head, for he said not a word upon it; nor does it seem to have occurred to the commissioners, that there could be any doubt about it; for they did not direct his attention to it, nor put any question to elicit his opinion upon it. It is plain what his view is, for he sat on a court martial which sentenced several persons to death for participation in the massacre perpetrated several days before the proclamation of martial law. We conceive that he was right in his view; and the commissioners have said not a word, nor put a single question, to convey the slightest doubt about it, although they have put several upon the other point, as to the *duration or continuance* of the state of martial law. From this we conceive it to be clear, that they concur with the Attorney-General in thinking, that when once martial law has been proclaimed, persons may be tried by courts martial, not only for acts of rebellion *previously committed*, but for such acts committed *previously to the state of martial law*. The only principle on which it can be put is, that the *object* of martial law is the restoration of peace and confidence; that the *means* by which the object is to be attained must be left to the discretion of those in command; and that if the summary trial and execution of persons who have previously committed acts of rebellion is necessary for that end, such trials and executions must take place. In short, that "the ruler must not bear the sword in vain, but must make it a terror to evil doers," by punishing them for the evil which

they have done. This seems a necessary consequence of martial law. The *contrary* view renders illegal almost every trial and execution which took place; for in almost every one, the act of outrage or rebellion charged was committed before the proclamation.

Yet it was stated by many witnesses of authority and position, that these trials and executions stopped the insurrection from spreading; and no one can doubt that the tenor of speedy military punishment has a tremendous effect in checking an insurrection. If, therefore, the true scope of martial law is prevention and repression, and not merely *resistance*, it would be *essential* to commence by the speedy trial and execution of the parties guilty of outrages *already* committed, instead of *waiting for others* to be perpetrated. And if this view be right, then it would go far to vindicate *all* the executions which took place under the authority of a court martial; assuming, as seems to have been the case, that the proceedings were fair and honest, even if erroneous, for all were put upon the same footing, viz. the necessity of striking terror by some terrible examples.

The fundamental question then is, was there a rebellion? That is, was there one still existing and continuing during the time martial law was upheld? For, of course, we are aware that this must be made out to justify the continuance of martial law; though even as to that, if there was an honest error of judgment, Parliament would, doubtless, provide an indemnity.

But the *first* question, the *great* question on which all the rest turns, is, *was there a real rebellion?* That is, in the *district* where martial law was proclaimed. If there was, few will doubt that it continued, at all events, smouldering up to the end of October.

Be it observed, that martial law was only proclaimed in the county of Surrey—the greater part of which consists of the very large parish of St. Thomas, stretching right across the island, from Morant Bay to Port Antonio, forty miles—and that it was proclaimed on the 13th October, two days after the massacre, and was virtually ended by the end of the month; at all events as regards capital executions. Gordon having been tried and executed about the 22nd, and most of the severities reported having taken place on the few days between the 13th and the 22nd, scarcely a week. Now the question is, whether, during that time and in that district, there was reasonable evidence of a real rebellion and insurrection of the negroes. All we can say is, having carefully perused the most copious reports we could procure from the Jamaica newspapers of the evidence before the commission (and these reports appear to be verbatim), we conceive that it is abundantly established that there *was* such a rebellion. There was growing disaffection for months; there was arming and drilling going on for months; hundreds upon hundreds were armed and drilled; and on the occasion of the massacre, it is proved, by a host of witnesses, in no way discredited or contradicted, that several armed and drilled bodies of negroes marched down upon the court-house from different points, so as to surround it, and regularly attacked it.

We are discussing the question as lawyers; and, of course, even if the issue were, whether there was a rebellion or not, it would be enough for us to shew that there was *evidence* of it. But we contend that such is not the real issue; but that the true question is, whether the Governor had a reasonable belief of such a rebellion, or of the danger of its spread. The importance of this distinction is great, especially as regards the question of the *duration* or *continuance* of martial law, and of the necessity for *trials* for previous offences. For instance, the Governor in his evidence, stated that between the 20th and the 30th October, "repeated applications were made to him for troops from various districts, all shewing the necessity for continuing martial law." And he states that he had numerous sources of information and reasons of belief, which it was difficult for him, after a lapse of time, even to recollect and to state, still more to prove; indeed, for the most part, such matters would not, perhaps, be admissible as legal proof of the existence of the rebellion, or the necessity for the continuance of martial law, though they would strongly shew a real honest reasonable *belief* on those points. And general, almost universal, belief in the island—though no legal proof—would, it is manifest, be the best possible proof of such honest and reasonable belief, and, indeed, strong grounds for the exercise of a supreme discretion.

Next, as to the measures of repression taken under martial law, their nature, and their continuance. As to this, in the first place, there seems to be a doubt who is to be deemed in supreme authority after the proclamation of martial law—the Governor or the Commander; for General O'Connor stated that the ablest lawyers at home were divided on the point. We should think, however, that the Governor, although he is Captain-General, would only be responsible for the *proclamation* of martial law, and also for all such measures actually taken as were in accordance with military law as ordinarily executed on such occasions, but not for any excessive abuse, unless so far as directly ordered by himself; and that appears to be Governor Eyre's opinion; for he declared that though (except as to Gordon's trial, for which he owned that, by reason of his directing it, he was to some extent personally responsible) he was only *generally* responsible for what was done, and while he avowed this *general* responsibility, he declared that he had nothing to do with the measures actually adopted, and which he did not personally direct, but which were taken under the *general* orders of the Commander, the Brigadier (Colonel Nelson), and the principal officers in command, Colonel Hobbs and Lieutenant Adcock, &c., and the Provost Marshal.

Next, it would appear that the Commander-in-Chief, General O'Connor, does not consider himself responsible for *particular* measures adopted under his *general* instructions, except so far as they naturally followed out of those instructions; and on this view he probably is right, for it appears that he gave no *particular* instructions, leaving Colonel Nelson, the Brigadier commanding *in the field*, to take such *military* measures as he deemed proper and advisable. From which it is

plain that he deemed it the duty of the Brigadier to follow the rules of the military service or the laws of man. And the tenor of his letters and orders renders this clear. He wrote:—"I instructed you to send out parties and capture any *rebels* they may discover, and I am much pleased by your adopting a decided course with regard to captured *rebels*. The men you have sent into camp, however, on mere suspicion or vague charges, have caused some embarrassment. One of two courses seems to me under martial law to be the rule for your conduct. If on careful investigation the captured persons are innocent (always giving them the benefit of a doubt), then release them; but if guilty and taken red-handed, summary justice and execution of the sentence."

From this it would appear, that though there might be *captives* on suspicion, yet, before any military execution, care was to be taken to see if those captured were innocent. From this it is to be inferred, that under martial law, where persons are captured in the proclaimed district on suspicion, the *onus* is on them of proving their innocence. And this appears more clearly from the statements of the Brigadier, the officer actually in command in the field, Colonel Nelson. His orders were:—

"All ringleaders to be secured. Men found in arms to be summarily dealt with. *Minor* punishments to be inflicted on the spot."

From which it is to be inferred that *executions* were not to take place except either in cases of men *found in arms*, or after trial by court martial.

And this was only the order issued on the 20th October to Lieutenant Adcock for a few days during which he was to be in *actual military service*. Different orders were issued a *fortnight* later to an officer who was *not* sent on military service, but only for purposes of *protection*. He was ordered *not* to inflict any summary punishment, but simply to remit any cases fit for inquiry. Here we see the difference perfectly recognised between the rules of actual warfare or military service, and mere measures of protection or precaution. At the same time, the Brigadier distinctly stated, "that in his view, under martial law, the whole population were to be presumed rebels until they proved the contrary, and that he considered that he was in an enemy's country, or otherwise he supposed martial law would not have been proclaimed." Probably this is correct in theory, for the whole theory of martial law is based upon the existence of a state of war. But then, it will be observed, that it by no means follows, in military notions, that all persons in the proclaimed district are to be shot or hanged indiscriminately; for even in a state of actual war, that is *not* the rule of war, and non-combatants are *not* to be attacked, unless known to be assisting the enemy. Hence the Brigadier only directed that *men found in arms* were to be summarily dealt with; and, as Lieutenant Adcock put it, "I have discouraged the taking of prisoners except those who were actually concerned in the rebellion."

It was only those found in arms who were to be summarily dealt with, i. e. without court martial. In other cases, persons suspected of having been con-

cerned in the rebellion or the massacre were to be tried; and the Brigadier stated, that he read over the notes, but he distinctly stated—we believe, correctly enough, according to the rules of the military service—that under martial law, notes are not needed; and that it was only an excess of care on his part which led to their being taken and perused by him. The laws of war, or the rules of the military service, only require either—first, that the person executed shall have been taken with arms; or, secondly, that there shall have been a real and fair inquiry as to whether they were parties to the rebellion. Lieutenant Adcock, who took an active part in the military measures of repression, stated—first, that under his orders, no one was *executed* against whom there was not evidence of having taken part in the massacre; secondly, that no one was punished but those in whose houses were found stolen property, or against whom there was some evidence of having taken part in the outbreak; thirdly, that his detachment was kept in good order, according to military rules, which he explained to mean, that no firing, &c. was allowed, without orders from the officer in command. This last answer was to a specific question put by Sir H. Storks, and may, no doubt, be taken as conveying his view of the proper rule and limit as to the conduct of the military in a district under martial law.

As to the amount of evidence necessary on such inquiries, it would hardly be necessary that it would be such as would satisfy a jury; it would be enough if it were such as *really* to satisfy a man honestly exercising an authority purely *military*, and a jurisdiction *avowedly* necessary and arbitrary. One or two specimens may suffice as illustrations. The evidence against one man executed (McLaren) was, that he was seen among the mob at the massacre flourishing a sword. Assuming this to be true, it would be evidence even for a jury, on the well-known doctrine, that all who are *present* aiding and abetting in a felony are equally guilty. The evidence against another (Mitchell) was, that a bayonet, believed to be one of those taken from the police just previous to the massacre, was found in his house, and was unaccounted for. There, again, was a fact extremely damning, and, according to our view, has raised a vehement presumption of guilt; and although it is, of course, *possible* he may not have been actually present, it is vain to deny that it raised a very strong probability of complicity, and, in the absence of any evidence of innocence, it cannot be said that there was no evidence to satisfy a military man in a summary inquiry.

The question in all these cases is, we presume, not whether the people *now* think the prisoners guilty, but whether their judges *then* thought so; not whether there was *sufficient* evidence to convict them, but whether there was any evidence against them; or, in other words, not whether there was enough evidence, but whether there was *no* evidence. The proceedings of all courts or tribunals acting under any lawful authority—ordinary or extraordinary, legal or military—are to be *presumed* to have been fair until the contrary is shown; and the real question is, whether the officers of these courts martial acted *recklessly* or *honestly*.

Let it be observed, that the question is not whether the evidence was such as now would be deemed sufficient, but whether it then really and honestly satisfied the military authorities. That point, which is fundamental and one of principle, was, we observe, distinctly ruled by the commissioners, for one of the officers being asked whether he was *now* of opinion that a certain man who had been executed was really guilty, the commissioners interposed, and said *that this was not the question*; and the witness answered, by stating that he really *could* not say, but he presumed that the court martial were satisfied.

That, it is obvious, is the real question, meaning thereby, that they *really and honestly* were satisfied, as a matter of fact—whether or not they were *rightly* so satisfied—provided there was any evidence on which a man honestly and rationally *could* be so satisfied. For, of course, it would be more than idle to hold that martial law might be proclaimed, and prisoners tried by the law military, that is, by summary inquiry; and that afterwards other cases were to be retried by the rules of ordinary law; or the judgment, the honest judgment, of the courts martial reversed by that of other men long after the event.

There was, indeed, an opinion published by two eminent lawyers, that courts martial held under such circumstances are not really courts at all, but merely committees of persons executing martial law. This probably meant no more than that they were not regular or ordinary courts martial, which is perfectly immaterial, unless it is meant that under martial law no one can be executed who is not taken in actual conflict, or with arms in hand. And this seems to have been at first the idea of Colonel Hobbs, whose impression, he said, was, that martial law did not authorise his dealing with men who were not found in arms, and resisting. But this was clearly erroneous, for it would not even include cases of men caught, as the Commander-in-Chief expressed it, “red-handed,” or (as we put it in our former article) “with muskets hot,” even in their own houses, an hour after the massacre. It would be idle to exclude such cases, if martial law is to have any effect at all. The object, it is obvious, is the repression of such outrages, and the restoration of peace and confidence; not the mere *resistance* of outrage. As we shewed before, martial law is not necessary for *that*, for every subject may of his own mere motion *resist* actual outrage. But the object of martial law is not merely resistance; it is repression and *prevention*—that is, to prevent the *recurrence* of fresh outrages. Martial law presumes that there is a peril of their continuance, otherwise it ought not to be proclaimed at all, as already shewn. But, on the other hand, if it is intended to *prevent* outrages, it must be kept up until that object is attained, and until there is no peril of their recurrence. When that is must be a matter of discretion, under the circumstances, and must depend mainly upon the probable peril of the spread or extension of the rebellion; and when the rebellion is one of a class or colour, then the probable extent of its area is, or may be, the whole extent of the population of that class or colour; that is, in this case, 400,000 blacks. And there, as Sir

F. Head pointed out, it is a question of *proportion* and preponderance of that particular class, as compared with those who require protection; that is, in this case, 15,000 whites. And measures may be necessary and reasonable, under those circumstances, which would not be so otherwise. But it is essentially a question of local knowledge and discretion to be exercised *under the circumstances, and at the time*.

The main ground on which the proceedings by courts martial are impeached is, that the Governor himself stated that a few days after the massacre the insurrection was suppressed; but this is an unfair use of statements in despatches hastily written, and, taking the whole together, it is clear that what was meant was, that actual outbreak had been suppressed. It by no means would follow that there was no longer any imminent peril of the renewal of the insurrection; and the evidence before the commission not only shews that there was, but that down to the 22nd, the date of Gordon's trial, acts of outrage had *not* in fact ceased; so that, if the Governor so stated, he wrote, in haste, erroneously. We have before us sworn evidence of acts of outrage up to, and on, the 21st October.

The mere fact, that by the activity and energy of the small body of soldiers in the island, the blacks had been checked and cowed, did not shew that the peril was passed. The rebellion might, in a sense, be “suppressed,” yet not extinguished. And a rebellion of blacks against whites in an island, where the preponderance of the blacks was so enormous, must have been awfully dangerous.

Is it fair or candid to argue, that, because the Governor said he had “checked” or “suppressed” the rebellion, that, therefore, it was at an end? Is it fair to do so in the face, not only of his solemn declaration that he himself dreaded another outbreak, but of the notorious fact that the whites throughout the island dreaded it? General belief is certainly not conclusive proof, but it is the strongest proof of reasonableness and honesty of belief, what every one believes may possibly be wrong, but it can hardly be dishonestly wrong; and that the accusers of Mr. Eyre have to make out that he acted recklessly, and “under colour” of martial law, without any rational belief in the necessity for it. For be it observed, of that necessity he was to judge. He was representing the Crown, just as the Lord Lieutenant or the learned judges, as to the necessity for proclaiming a district. He may be wrong in his judgment, but he could not be tried for it. The Court of Queen's Bench in Ireland so held lately, after solemn argument, that the Viceroy is not legally responsible for an act of state, that is, an act done in the discharge of his duties as Viceroy. So of a Governor of a colony. If, indeed, he acts *under colour* of his authority as Governor, or does an act obviously illegal, because *beyond* his authority; or if he acts without legal warrant and without proclaiming martial law, or proclaiming it without any rational belief in its necessity, he will be legally responsible. But if having rational grounds for belief in its necessity (of which *general* belief would be deemed conclusive proof), he merely errs in his judgment; no

lawyer in his senses would suppose that he was legally responsible. Whether, in the present case, Mr. Eyre *did* err in his judgment, and was wrong in believing there was a rebellion, or that it continued, our readers can judge from the evidence of the Attorney-General as to the *unanimous* judgment of the island.

And, as we have shewn, the question of the proclamation of martial law and its continuance are virtually the same, because, in point of fact, martial law was put in force almost entirely in respect of acts of outrages *previously committed*, that is, committed *before* martial law; and this could only be vindicated upon the principle that the object of martial law is, prevention and repression, by means of terror of military executions. If not, then all the proceedings are illegal, which no one, surely, can pretend. But if that even is not supportable, and we submit it is not, then, as regards the general question, it is one of the *honest* exercise of an absolute discretionary power.

The letter of the Secretary for the Colonies to the Governor, which gives *his* notion of the scope of the inquiry, stated that the Government desired to see it *clearly established* that no one was executed until crimes had been proved in evidence against them which deserved death, and that their execution was necessary to rescue the colony from imminent danger of the spread of the insurrection, and the repetition elsewhere of the same outrages. But this, we conceive, is a false issue. It would make the vindication of the Governor and the military commanders depend upon their power now to establish it, and establish it clearly, that the crimes were proved for which the parties suffered. This involves, first, the power of producing legal proof; and, next, the power of persuading others, at a great distance both of time and space, and other very different influences, to adopt *their* views, draw *their* inferences, and form *their* opinions, as to the weight and effect of evidence. This would be perfectly impossible; for we all know that judges and juries constantly differ as to the weight of evidence, and there are (as a great judge said), "all degrees of it, from bare suspicion up to absolute demonstration and conclusive proof." Thus, therefore, on the view of the Secretary of State, it is absolutely impossible that the Governor and the military commanders can vindicate themselves.

This could not have been the view of Hale and Hallam; for they speak of it as a matter of arbitrary (although, no doubt, as is implied, *honest*) discretion. It could not have been the view of the Legislature in framing the Petition of Right and the Jamaica Martial Law Act; for the one recognises that *military* law applies in time of war, which includes rebellion; and the other declaring the common law distinctly authorises the Commander-in-Chief to take all such measures as *he* may deem "necessary or expedient" for the defence of the island.

According to these authorities, it is manifest it is enough for the Governor or Commander to shew, that as a matter of fact, all the measures *they* took, and all the executions *they* authorised, were *honestly* allowed under martial law; and the sole question is, what *they* honestly believed to be necessary, and to be in accord-

ance with the law military. If, indeed, it can be shewn that they authorised acts *not* in accordance with the law military, as the wanton execution of innocent men, then they would be without excuse. So, if it could be shewn that they acted recklessly; for that would be acting, in a legal sense, *maliciously*.

But once assume martial law to have been legally proclaimed, and a state of war legally established, they are then to be judged, not by the common law, but by the law military; and the question will be, whether, as a matter of fact, they acted honestly in the exercise of military authority; that is, in the *ordinary* way in such cases, and according to the ordinary understood rules of military service on such occasions; and *they* have not to establish that the persons they executed were guilty, but, on the contrary, those who accuse them and assail them have to shew that they were innocent. Nor would that suffice; even that would be only going half way. It must be clearly established, not only that the persons sentenced or executed were innocent (for that might occur on a trial by judge and jury), but that those who sentenced them *might and ought to have known this*; and must have known it, if they had not been reckless, or if they had acted with the least care and thought; or, in other words, it must be shewn that they were not really *satisfied* of the guilt of those whom they condemned, but that they were really reckless, and did not care, nor try, nor want to be satisfied, but acted *recklessly*.

The monstrous injustice which would result from an opposite view may be shewn in two ways. There are two great questions—the existence of a conspiracy to slaughter the whites, and take their lands; and the complicity of those executed, and especially of Gordon. Now, as to *both* questions, there is abundance of evidence which was *not* taken at the courts martial, but has come out since. For instance, in the course of the trials before the Chief Justice, the conspiracy has been proved in the strictest way, and men have been convicted and sentenced to death for complicity in it; and before the commissioners, evidence has been given that several of those executed said at the gallows, that "Gordon had brought them to it." Now, neither of these heads of evidence was accessible to the court martial, and, in strictness, neither would be legally admissible, for evidence given on a trial against *one* man is not admissible as against another, and statements against a man are no evidence if made when he was not present; yet who doubts that evidence, which satisfied the juries in capital cases, was true? And who doubts that the dying declarations of those men were true? There, then, are two whole bodies or heads of evidence, putting the matter mainly in question beyond a doubt, and which yet are not available as legal evidence.

And now observe, although, as the Attorney-General rightly considered, courts martial are not bound by the legal rules of evidence, the *commissioners* consider that *they* are; and the consequence is, that the officers in command can adduce no evidence which is not legally admissible; and, on the other hand, it would seem that they are deprived of the benefit of any evidence they admitted on the courts martial which would

not be legally admissible. For when it was proposed to produce a letter which a witness said he received from a Captain Edinborough (who was not in Jamaica) to prove the remarkable fact of Gordon's negotiation for a war vessel, the commissioners would not receive it, as, of course, not legal evidence. And, on the other hand, when the proceedings of the court martial on Gordon were under consideration, and it appeared that the witness had himself seen the original manuscript of Gordon's proclamation in his own handwriting, and had seen it in print, Mr. Maule appears to have objected that *the original ought to have been produced!* Why, this would be to require at a court martial as great strictness of proof as at a regular criminal or civil trial.

The Attorney-General was of a very different opinion; for he avowed that he had acted upon facts of which he was reasonably satisfied, though, by evidence not strictly legal. For instance, he said he was satisfied of the circumstances of the measure, because he read them, stated in a letter from a friend on the spot; and he saw a copy of Bogle's letter. This was sufficient to satisfy any reasonable man. Forgery is not to be presumed. And after all, Mr. Maule forgot that, even at Nisi Prius, or in a criminal court, if *there is no objection*, secondary evidence is admissible. And we do not read that Gordon *objected* to the evidence, or ever denied the proclamation which was printed and placarded in his name. Fancy a court martial gravely waiting until "the original was produced"—a witness having seen it in the prisoner's handwriting, and the prisoner himself *not denying it*.

We care not whether the commissioners in this particular matter were correct or not; for if they were, it makes our argument the stronger—which is, the injustice of calling upon the Governor and military commanders clearly "to establish," by legal proof, facts of which they were perfectly satisfied as reasonable men, but of which, it may be, they are not in a position to give legal proof, and as to which it may be, that no legal proof was forthcoming at the time. The practical result would be, that after prisoners had been tried and executed by court martial, as they legally may be, *without* any evidence legally admissible, then cases would be retried by the ordinary rules of evidence; and thus it would be impossible for the military authorities to justify themselves; and martial law would either be a snare, if exercised, or would not be exercised, and its proclamation would be nugatory.

BOOKS RECEIVED.

The Toxicologist's Guide; a New Manual on Poisons, giving the best Methods of Manipulation to be pursued for their Detection (post mortem or otherwise). By John Horsley, F.C.S., Analytical Chemist, Cheltenham. Illustrated by coloured and other Diagrams. Post 8vo., pp. 73.—Longmans.

Inaugural Address delivered to the University of Glasgow, on his Installation as Lord Rector, the 22nd March, 1866, by the Right Hon. John Inglis, LL.D., C.C.L., Lord Justice Clerk.—Blackwood & Sons.

NISI PRIUS SITTINGS, IN AND AFTER EASTER TERM, 1866.

Court of Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Tuesday, Apr. 17	There will not be any sittings during term in London.
2nd sitting, Tuesday 24	
3rd sitting, Tuesday .. May 1	

After Term.

Wednesday May 9 | Saturday May 12

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Court of Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Tuesday April 17	The Court will not sit in London during term.
Tuesday 24	
Tuesday May 1	

After Term.

Wednesday May 9 | Friday May 11

The Court will sit during and after term at ten o'clock.

Exchequer of Pleas.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Tuesday, Apr. 17	The Court will not sit in London during term.
2nd sitting, Monday 23	
3rd sitting, Monday 30	

After Term.

Wednesday May 9 | Friday May 11

The Court will sit during and after term at ten o'clock.

The Court will sit in Middlesex, in term, by adjournment from day to day until the causes entered for the respective Middlesex Sittings are disposed of.

THE BANKRUPTCY ACT.—At the judges' chambers Mr. Justice Willes decided a question of some importance as to cases before the county courts, in which arrangement deeds in bankruptcy were pleaded in bar of the actions. An application was made to his Lordship to grant a writ of prohibition to stay the proceedings in an action in which a county court judge had decided against a defendant who offered to give evidence that he had obtained his protection under a deed filed in the Court of Bankruptcy. The county court judge did not consider the deed was any answer, and accordingly gave judgment for the plaintiff. Mr. Justice Willes was of opinion that the judge was bound to entertain the question. The Bankruptcy Act expressly stated that a deed registered was an answer. It was not for him (Mr. Justice Willes) to say whether he considered the Bankruptcy Act was a wise one, but he was bound to act under its provisions while it was in force. His Lordship referred to a case respecting a church rate in the Arches Court, in which the Common Pleas had granted a prohibition against an order of Dr. Lushington, and the proceedings had been tied up. There was no pretence of anything improper in either case, but the superior courts were bound to grant writs of prohibition where the cases were clearly made out. In this case the deed was by law an answer, and the prohibition must follow.—Order accordingly.

COURT OF CHANCERY.

SUMMARY of the PROCEEDINGS in the CHAMBERS of the MASTER OF THE ROLLS and of the VICE-CHANCELLORS in the Year ending the 1st November, 1865.

[Compiled from the Returns made to Her Majesty's Government for insertion in the "Judicial Statistics" of the above Years.]

NATURE OF PROCEEDINGS.	Total of all the Chambers.		Master of the Rolls.		Vice-Chancellor Kindersley.		Vice-Chancellor Stuart.		Vice-Chancellor Wood.	
	No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
	1865.	1865.	1865.	1865.	1865.	1865.	1865.	1865.	1865.	1865.
Number issued of summonses to originate proceedings, viz.:—		£		£		£		£		£
For the administration of estates . . .	453	....	200	....	66	....	114	....	73	....
Under the Charitable Trusts Acts . . .	7	....	6	....	..	....	1	....	..	....
For the appointment of guardians and maintenance of infants . . .	145	....	64	....	36	....	29	....	16	....
For other purposes . . .	161	....	84	....	6	....	51	....	20	....
Number issued of summonses, not being summonses to originate proceedings . . .	19,623	....	6,731	....	3,233	....	4,204	....	5,455	....
Number of orders made, viz.:—										
Of the class drawn up by the registrars . . .	7,028	....	2,634	....	1,024	....	1,844	....	1,526	....
Of the class drawn up in chambers . . .	6,863	....	1,614	....	1,365	....	1,137	....	2,747	....
Number of orders brought into chambers for prosecution, other than orders for winding up companies . . .	1,806	....	762	....	228	....	466	....	330	....
Number of orders brought into chambers for winding up companies . . .	63	....	39	....	10	....	3	....	11	....
Number of advertisements issued . . .	971	....	420	....	147	....	233	....	171	....
Number of debts claimed and adjudicated on . . .	6,461	....	2,293	....	2,409	....	1,123	....	636	....
Amount of debts proved . . .	..	3,626,735	..	1,610,972	..	1,390,635	..	199,999	..	425,129
Number of accounts passed, other than receivers' accounts . . .	1,241	....	495	....	161	....	432	....	225	....
Amount of receipts therein . . .	..	6,535,836	..	2,546,190	..	1,908,674	..	1,682,724	..	1,053,248
Amount of disbursements and allowances therein . . .	..	5,994,279	..	2,313,609	..	1,254,393	..	1,563,317	..	862,960
Number of receivers' accounts passed . . .	566	....	219	....	108	....	151	....	86	....
Amount of receipts therein . . .	..	2,117,349	..	1,115,270	..	310,711	..	293,502	..	397,866
Amount of disbursements and allowances therein . . .	..	1,908,643	..	1,063,826	..	246,724	..	245,651	..	322,442
Number of sales of estates under orders of court . . .	715	....	342	....	100	....	166	....	107	....
Amount realised by sales of estates . . .	..	1,747,339	..	741,890	..	115,978	..	427,468	..	462,003
Number of purchases of estates under orders of court . . .	123	....	40	....	23	....	26	....	34	....
Number of titles and other matters directed to be investigated by the conveyancing counsel . . .	361	....	142	....	34	....	110	....	75	....
Number of certificates filed . . .	2,307	....	879	....	316	....	642	....	470	....
Number of contributories included in lists of contributories . . .	1,447	....	1,053	....	331	....	21	....	42	....
Number of contributories excluded from lists of contributories . . .	213	....	126	....	85	....	..	....	2	....
Amount of calls made under orders for winding up companies . . .	..	2,310,418	..	220,608	..	776,548	..	....	..	1,313,263
Number of appointments (by summonses, adjournment or otherwise) disposed of . . .	46,966	....	17,876	....	7,741	....	10,623	....	10,556	....
Number of orders under which accounts and inquiries were pending at date of return . . .	2,990	....	1,806	....	385	....	430	....	569	....
Number of orders for winding up companies then pending . . .	175	....	101	....	30	....	6	....	38	....
Amount of fees collected in chambers by stamps . . .	..	11,570	..	4,360	..	1,762	..	2,763	..	2,665

Note.—The fractions of a pound are omitted.

BILLS IN PROGRESS.

DIVORCE AND MATRIMONIAL CAUSES.

Bill further to amend the Procedure and Powers of the Court of Divorce and Matrimonial Causes.

[Lord Chancellor.]

Recites the 20 & 21 Vict. c. 85, s. 32, "That the court may, on pronouncing any decree for a dissolution of marriage, order that the husband shall to the satisfaction of the court secure to the wife such gross or annual sum of money as the court may seem reasonable, and for that purpose may refer it to one of the conveyancing counsel of the Court of Chancery to settle and approve of a proper deed to be executed by all necessary parties."

Sect. 1. In every such case it shall be lawful for the court to make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sums for her maintenance and support as the court may think reasonable: provided always, that if the husband shall afterwards from any cause become unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order, wholly or in part, as to the court may seem fit.

Sect. 2. In any suit instituted for dissolution of marriage, if the respondent shall oppose the relief sought on the ground in case of such a suit instituted by a husband of his adultery, cruelty, or desertion, or in case of such suit instituted by a wife on the ground of her adultery or cruelty, the court may, on the hearing of the cause, give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had filed a petition seeking such relief.

3. No decree nisi for a divorce shall be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the court shall under the power now vested in it fix a shorter time.

COUNTY COURTS BILL.

Abstract of Bill for the Abolition of the Offices of Treasurer and of High Bailiff of County Courts as Vacancies shall occur, and to provide for the Payment of future Registrars of County Courts.

Recites 9 & 10 Vict. c. 95.

Sect. 1. Vacancies in the office of treasurers of county courts not to be filled up.

2. Treasury to provide for examination of accounts of registrar and other officers of the courts.

3. Treasurers may retire upon superannuation in certain cases.

4. If person appointed to examine accounts be a treasurer's clerk, after probation he shall be deemed a civil servant.

5. Treasury to make rules for keeping and rendering accounts by registrars and other officers of the courts, and direct payments by registrars to be paid into Bank of England.

6. Accounts to be rendered to audit board.

7. Accounts to be audited.

8. Property of courts to vest in a person to be appointed by the Treasury.

9. Court-houses, &c. may be provided.

10. Registrar to send to Commissioners of Audit an account of all sums paid by him to Paymaster-General.

11. On a vacancy in the office of high bailiff, the registrar of the court shall perform the duties of high bailiff, if he shall have been appointed a registrar subsequent to the passing of this act.

12. Additional remuneration to registrar for performing the duties of high bailiff.

13. No person to be high bailiff of more than one court.

14. Salaries of future appointed registrars. Minimum, 100*l.*, and 4*l.* for every 25 plaints above 200 per annum up to 6000. If plaints exceed that number, salary to be fixed by Lord Chancellor, but not to exceed 700*l.* Provision not to affect emoluments in equity and bankruptcy.

of new trials there is only one for judgment, and twenty-six for argument. In the special paper there are forty-six rules for argument, and one for judgment; and of enlarged rules the number is eleven. In the Common Pleas, in the remanet paper there are fourteen new trial rules, and four cases waiting the decision of the Court; seventeen demurrers have been entered for hearing. In the Exchequer there is one error and appeal for judgment, and none for argument. Only two rules are in the peremptory paper, ten in the special paper, and of new trials, one for judgment and seven for argument. According to annual custom, the Lord Chancellor will give a reception to the learned judges and other legal personages on the first day of term. By act of Parliament the terms have been fixed, but as the 15th inst., the commencement of Easter Term, happens this year on a Sunday, the term will begin on Monday, the 16th inst. The first sittings in Middlesex in the Exchequer will take place on the 17th inst. In the course of the forthcoming term the question respecting the lectures given at St. Martin's Hall on Sundays will be raised in a friendly manner before one of the superior courts.

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EASTER TERM.—At the reopening of the law offices the arrears in the three common-law courts for the ensuing term were exhibited. In the Queen's Bench,

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THE JURIST.

LONDON, APRIL 14, 1866.

A CASE has been very recently decided by the Court of Exchequer, on a matter of some interest to those engaged in building operations under long leases. The point is of general applicability to all property dealt with by leases, but as it has especial reference to agreements for leases, and as these are very common transactions where land is taken for building purposes, and as there is a very large and constantly increasing extent of property in and about the neighbourhood of London and other large towns embarked in such undertakings, we think it may be useful to draw the attention of those of our readers who may be engaged in advising either builders or landowners on their rights and liabilities under leases and agreements for leases, to the case referred to, viz. *Cousins v. Phillips* (3 H. & C. 892).

That case has decided, that in the case of *agreements for leases* (with a first lessee), resulting by reason of the proposed sublessee entering into possession and paying rent, without any lease having been made, in tenancies from year to year, that such sub-tenancies come under the operation of the 4 Geo. 2, c. 28, s. 6 which relates to the surrender and renewal of leases without the consent of underlessees, and that, thus, if their immediate landlord is the lessee for a long term of years, he may surrender his lease to the ground landlord without the consent of the sub-tenants, and a new lease may be granted either to him or to any third party, who has bought his, the first lessee's, interest; and though the reversion is thus entirely changed, the sub-tenancies remain untouched, the new lessee under the ground landlord becoming assignee of the reversion expectant on them. The case in short comes to this, that the beneficial provisions of the 4 Geo. 2, c. 28, s. 6, apply not only to the case of sub-leases under seal, and containing covenants under seal, as its language would, at first sight, seem to imply, but also to agreements for leases, where yearly tenancies have sprung up under them. For instance, if S. has a lease for forty years from the freeholder, and proceeds to build houses, and when the houses are completed lets tenants into possession under agreements for a lease without any actual lease being granted, and they became tenants from year to year on the terms of the projected leases, so far as they are applicable to yearly tenancies, that S. may sell his term, and that he and the purchaser may, without asking the consent of the sub-tenants, surrender S.'s original term, and obtain from the landlord a new term to the purchaser, and the sub-tenancies will remain; the effect of the stat. 4 Geo. 2, c. 28, being to place the parties in the same position as if S. had been the owner of the fee-simple; and, after creating the tenancies from year to year, had assigned his reversion to the purchaser. That such is held to be the state of the law, is obviously beneficial both to the landowner and builder. It enables the builder to get rid of all responsibility to the ground

landlord, and enables the ground landlord to have, instead of a mere assignee of the term, the direct liability of the purchaser, who takes the new lease, while the sub-tenants are in no way injured, their tenancies being continued on the terms they have always held them.

The conclusion that such is the law was arrived at in an action against an assignee of a yearly tenancy so created, on his covenant to indemnify his assignor. We take the summary of the facts from the marginal note (3 H. & C. 892):—"Smith, a lessee for a term of forty years, agreed to grant Fawcett a lease of the premises for twenty-one years, with the usual covenants; Fawcett entered into possession, and paid rent to Smith. Smith sold the premises to Hyland, who joined with Smith in a surrender of his lease. The ground landlord granted a new lease to Hyland for the residue of the term of forty years. Fawcett assigned the agreement for a lease for twenty-one years to Cousins, by indenture, in which Cousins covenanted to pay rent and perform covenants, and indemnify him against non-performance. Cousins assigned the agreement for a lease, by indenture, which contained the same covenants, to Phillips. Rent being in arrear, and the premises being out of repair, Hyland brought an action of ejectment, and Fawcett paid the rent in arrear, and expenses of repairs, and costs of action, and then called on Cousins to reimburse him, in pursuance of his covenants. Cousins settled the claim, and brought the action against Phillips, executor of Phillips, on his covenants:—Held, that a tenancy from year to year, upon the terms of the agreement for a lease, having been created between Smith and Fawcett, the 4 Geo. 2, c. 28, s. 6, placed the parties in the same position as if Smith had been the owner of the fee, and had assigned his reversion to Hyland; and, consequently, Fawcett having paid him the rent in arrear, and expenses of repairs, had a right to call upon Cousins to reimburse him; and Cousins, having settled the claim, was entitled to maintain an action against Phillips for the amount."

The 6th section of the 4 Geo. 2, c. 28, which provides for the renewal of chief leases without the surrender of all the underleases, is as follows:—"And whereas many of these leases cannot by law be renewed without a surrender of the underleases derived out of the same, so that it is in the power of any such under tenants to prevent or delay the renewing of the principal lease, by refusing to surrender their underleases, notwithstanding they have covenanted so to do to the great prejudice of their immediate landlords, the first lessees: for preventing such inconvenience, and for making the renewal of leases more easy for the future, be it enacted by the authority aforesaid, that in case any lease shall be duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all or any the underleases, be as good and valid to all intents and purposes as if all the underleases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person or persons in whom any estate for

life or lives, or for years, shall from time to time be vested by virtue of such new lease; and his, her, and their executors and administrators shall be entitled to the rents, covenants, and duties, and have like remedy for recovery thereof; and the underlessees shall hold and enjoy the messuages, lands, and tenements in the respective underleases comprised as if the original leases out of which the respective underleases are derived had been still kept on foot and continued; and the chief landlord and landlords shall have and be entitled to such and the same remedy, by distress or entry in and upon the messuages, lands, and tenements and hereditaments comprised in any such underlease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such underlease, as they would have had in case such former lease had been still continued, or as they would have had in case the respective leases had been renewed under such new principal lease; any law, custom, or usage to the contrary thereof notwithstanding."

Applying the statute to the state of facts in *Cousins v. Phillips*, Baron Martin, in his judgment, said—"Upon the best construction I can give the stat. 4 Geo. 2, c. 28, s. 6, it seems to me that it placed the parties in the same position as if Smith had been the owner of the fee-simple, and, after creating this tenancy from year to year, had assigned his reversion to Hyland;" and Baron Channell said—"I am of opinion that the stat. 4 Geo. 2, c. 28, s. 6, enabled Smith to surrender his lease, notwithstanding the tenancies which had been created under it by his agreement with Fawcett, and that the effect of the statute is to leave untouched those sub-interests in the premises, and place Hyland in the position of assignee of the reversion." (3 H. & C. 901). Baron Bramwell, who had left the Court before judgment was given, was of the same opinion.

We believe that this is the first instance of a decision on the 6th section of the above statute since it was passed in 1731. It is also noticeable, that besides the point more particularly adverted to, the case, in effect, also decides that the statute applies to a new lease granted to any third party on the surrender of the first lease.

STAMP ON FOREIGN RECEIPTS.

[From the Times.]

THE following correspondence relates to foreign acknowledgments of English remittances. The reply of the Government is not distinct. It admits that a receipt stamp is not necessary in such cases, and then goes on to say that a stamp to these acknowledgments may be obtained at the Inland Revenue Office within a given time, after which it can be procured only on payment of a penalty. If a stamp be not required, this last information is calculated merely to perplex the inquirer, and if the contrary be the case, the fact ought to be clearly made known. In any event, it would be preposterous to inflict upon the trading community the task of producing at Somerset House each foreign acknowledgment of money in order that a

penny duty may be paid upon it. A loss of time and labour to the amount of two or three shillings would thus be involved to bring a penny gain to the revenue:—

"69, Fleet-street, March 28.

"Sir,—May I request the favour of a reply to the following question:—

"I order goods from my agent in Paris. I remit checks in payment. Should his acknowledgment bear a receipt stamp?

"The transactions originating in this country, it strikes me that, in case of litigation, the absence of a stamp might prove fatal.

"I have the honour to remain yours, &c.,

"P. E. CHAPPUIS.

"The Right Hon. W. E. Gladstone."

"Inland Revenue, Somerset House, April 4.

"Sir,—The Board of Inland Revenue have had referred to them your letter of the 26th ult., addressed to the Chancellor of the Exchequer, in reference to the liability to stamp duty in the case of an acknowledgment sent from abroad of the receipt of your check drawn in this country.

"In reply, I am directed by the Board to state that such an acknowledgment is not required to be given upon a stamp; but if produced at this office within two months from the date of its receipt in this country, the same will be stamped upon payment of the duty.

"After the two months, it could only be stamped on payment of a penalty.

"I am, Sir, your obedient servant,

"Mr. P. E. Chappuis. "J. SARGENT."

STAMPS ON INSTRUMENTS EXECUTED ABROAD.

It will be seen from the correspondence published in the city article of the *Times* of Monday, that the authorities at Somerset House consider an acknowledgment signed abroad of the receipt of a check drawn in this country in payment for goods sent from abroad, "is not required to be upon a stamp, but may be stamped within two months from the date of its receipt in this country, on payment of the duty"—meaning, of course, the duty imposed on receipts upon the payment of money by the stat. 16 & 17 Vict. c. 59; 17 & 18 Vict. c. 83, s. 13, repealing in part and incorporating in part the explanations contained in the schedules to the statutes 48 Geo. 3, c. 149, and 55 Geo. 3, c. 184, tit. "RECEIPTS."

Acknowledgments of the payment of money were first charged with duty by the stat. 23 Geo. 3, c. 49, which imposed a duty of 2d. on receipts for sums amounting to 2l. or upwards, and not exceeding 20l., and a duty of 4d. on rents for sums amounting to 20l. or upwards. This act was wholly repealed by the stat. 31 Geo. 3, c. 25.

The material provisions now in force specifically referring to receipts are the following:—

31 Geo. 3, c. 25, ss. 17, 21.—Every person who signs or accepts a receipt liable to stamp duty without the same being first duly stamped, shall forfeit the penalty therein mentioned, unless within a month after date the receipt is brought to be stamped, on payment of the prescribed penalty for stamping after execution.

35 Geo. 3, c. 55, s. 8.—Penalty for signing an unstamped receipt for a sum under 100l. to be 10l.; for a greater sum, 20l.

Id., sect. 11.—Unstamped receipts may be stamped on payment of a penalty of 5l. within fourteen days after date, or of 10l. within a month after date. Not

to be stamped after the expiration of the month. As to the use of specific dies for specific denominations of stamps, see 3 & 4 Will. 4, c. 97, s. 19.

43 Geo. 3, c. 126, s. 6.—No receipt liable to duty to be given in evidence unless duly stamped.

The old statutes, including 55 Geo. 3, c. 184, exempted from the duty on receipts "letters by the general post, acknowledging the safe arrival of any bills of exchange, promissory notes, or other securities for money." This exemption was repealed by the stat. 17 & 18 Vict. c. 83, s. 13.

The present stamp duty of 1*d.* on receipts for money amounting to 20*l.* or upwards, was imposed by the stat. 16 & 17 Vict. c. 59; and if the payment of the duty is expressed by an adhesive stamp, the stamp must be cancelled before the receipt is delivered. (Sect. 4).

There is, then, no enactment in the Stamp Acts specially referring to receipts signed abroad. And on the general principle that the acts only extend to instruments executed in this country, unless otherwise specially provided, such receipts must be taken to be exempt from stamp duty. It would be an absurd construction to read the Stamp Acts as requiring instruments to be written on paper or parchment previously stamped, when they are executed abroad, where no stamps can be procured; and accordingly, whenever special provision is made for imposing stamp duty upon any instrument executed abroad, provision is also made for impressing the stamp after the instrument is executed and brought to this country.

It is presumed that the duty is claimed under the provisions of the stat. 1 & 2 Geo. 4, c. 55, and probably, the success which has crowned the attempt to levy a duty on foreign powers of attorney under that act has encouraged the Commissioners of Inland Revenue to lay their hands on foreign receipts. Whether, as the writer in the *Times* suggests, it would be worth while to apply the elaborate machinery provided for stamping instruments after execution, to the sale of penny stamps in detail, was a consideration which seemed to have escaped the Commissioners.

The stat. 1 & 2 Geo. 4, c. 55, reciting that by the law then in force relating to the stamp duties payable in Great Britain and Ireland respectively, different rates of duty were payable in respect of deeds, agreements, and other instruments, and doubts had arisen as to the cases in which the same were chargeable with one or other or both of the said different rates of duties, "for the removal of such doubts" enacted, that every instrument relating wholly to any real or personal property in Ireland, or to any matter or thing (other than the payment of money) to be done in Ireland, should be chargeable with such stamp duties as were or should be payable by the laws for imposing and regulating the stamp duties in Ireland, and not with any other stamp duty; and proceeded thus, "and that every deed, &c. which shall relate to any real or personal property in Great Britain, or to any matter or thing (*other than the payment of money*) to be done in Great Britain or elsewhere than in Ireland, shall be chargeable with such stamp duties as are or shall be payable by the laws in force for imposing and regulating the stamp duties in Great Britain;" and deeds, &c. relating both to matters in Ireland and to matters out of Ireland, shall be chargeable under the stamp laws relating to Great Britain, and not with any other stamp duty. "Provided that every such deed, &c. shall be charged and chargeable with such stamp duties accordingly, and no more, *whether the same shall be ingrossed and executed at any place or places within the United Kingdom, or at any place or places not within the United Kingdom*; and whether any of the parties to such deed, &c. shall be resident in or executing the same at any place, either in Great Britain or Ireland, or elsewhere."

The act then makes special provision as to covenants and obligations for payment of money.

Now, in terms, this enactment clearly extends to every instrument executed out of the United Kingdom, and relating to any property in Great Britain or elsewhere than in Ireland, or to any matter or thing to be done in Great Britain or elsewhere than in Ireland, except the payment of money; and it clearly does not extend to any instrument relating merely to the payment of money, and not relating to property or to any other act to be done, and therefore does not extend to any acknowledgment of the payment of money; and so we may dismiss the subject of foreign receipts.

But instruments executed abroad, and relating to property wherever situate, or to any matter or thing to be done in any part of the world, are within the terms of the enactment; and it is seriously contended at Somerset House that they are within the meaning of the act, which made no provision, it must be observed, for the stamping of instruments executed abroad, upon their being brought to this country, without payment of the penalty—the commissioners having no power, under any circumstances, to remit the penalty after the expiration of a year from the execution of the instrument. The contention at Somerset House (see Tiley on the Stamp Laws, 281, 2nd ed.) amounts to this—that an assignment executed in France of a chattel, then being in France, from one resident French citizen to another, a general power of attorney given in France by one Frenchman to another, or a general assignment executed in France by a French resident of all his estate and effects for the benefit of his creditors, or a contract in writing, signed in France, to pay the price of goods sold and delivered there, cannot be received in evidence in this country unless it is stamped as an English instrument. The contention must go to this extent, or it must be limited to instruments executed within the United Kingdom, and such instruments as are chargeable under some special provision, notwithstanding that they are executed out of the kingdom. The absurdity of the conclusion is its sufficient refutation, and there cannot be a doubt that the operation of the act will be limited to its expressed object, namely, the removal of doubts as to which stamp duty, Irish or British, an instrument is liable which is clearly liable to one or the other. In fact, the Legislature has itself, within the last ten years, put this interpretation upon the act, by expressly charging various instruments executed abroad, and intended to operate in favour of persons in this country, with stamp duty.

Thus the stat. 19 & 20 Vict. c. 22, after reciting that "a practice has been established of insuring from loss by fire property situate within the United Kingdom by foreign companies, or by policies or insurances made abroad, and that it is expedient that such insurances should be subject to the same duties as the like insurances made by companies within the United Kingdom are now by law chargeable with," proceeds to charge such insurances to be thereafter made accordingly.

The stamping of instruments, executed by any party abroad, without payment of a penalty, if they are brought to be stamped within two months after reaching this country, was first provided for by the 13th section of the stat. 13 & 14 Vict. c. 97, but the provision obviously has no bearing on the question under discussion.

We may refer, in conclusion, to the case of *Wright v. The Commissioners of Inland Revenue* (11 Exch. 458), where it was held, that a conveyance of land in Australia, executed in the United Kingdom, is liable to stamp duty, the test of liability being the place of execution.

Parke, B., said, "The act imposes an advalorem duty on every conveyance upon the sale of land, provided that the deed is executed in this country." We think, however, that the deed was not liable as a conveyance of land, because "land," as a technical term, must, in an act limited to the United Kingdom, mean land within the kingdom. But as a conveyance on the sale of "property," it seems to have been properly charged. (See *Stonehake v. Babb*, 5 Burr. 2673).

On the other hand, in *Ex parte Candy* (5 L. J., N. S., Oh., 15), the Court of Chancery acted upon an unstamped letter of attorney executed in India for the receipt of a legacy payable in England.

There can be no doubt that a foreign or colonial letter of attorney may be given as evidence in this country without an English stamp, whether it relates to real or personal property here or not.

CASE LAW.—"Always, I believe, that all the judges richly deserve everything that is said of them; only it seems rather strong to say, that they alone of all men can never err.

"They seldom do err, and in very dark cases lay down the law almost like men inspired; but they affect to stand upright on their own reasonings, and immediately lay hold of the crutches of their predecessors; and not only so, but deem their dignity thereby increased.

"It is, in fact, conceded that you are free to dispute the soundness of a reported decision; but this freedom is practically borne down by a judicial terrorism, which I will have abated. I will have first, first, and last, last. I will have reason and judgment, sit on the cushions of dignity and comfort, in the front; and case and precedent, like the courier, with his bag for small expenses, and my lady's maid for solace and ornament, harmlessly and harmoniously on the rumble behind, ready and willing to put on the skid, or open a champagne bottle, and pin up a lappet, or administer the smelling salts, when wanted, but not before.

"Now here is a touch from nature.

"*Scene, a Posting House on the Northern Road.*

"Enter Dr. JOHNSON and Dr. SCOTT.

"Dr. Scott. Doctor, I have a headache.

"Dr. Johnson. Poof! Sir, when I was of your age I had no headache. Sir, you have no headache. Sir, you are a blockhead.

"Now, if the posting house had been a court of justice, and Dr. Johnson a judge, his head would have been a case in point, and Dr. Scott would have had no headache, and would have been a blockhead, and never would have been Lord Stowell.

"Sir William Jones, a reputed man of genius, but who read too much, and was too learned to be a very great man, and was, indeed, in this respect very properly at school with Dr. Parr, was highly delighted with our system of what were then called marginal notes, but are henceforward, it seems, to take the name and addition of cool headers. He said that they always enabled him to get at the conclusion he wanted, without waste of time in thinking, and were admirable illustrations of the independency of cause and effect. He used to compare them to ratifia cakes, set round a trifle; nice, crisp, ornamental little things, with a special flavour of their own, which you might pick off with your middle finger, if you had one; and, after removing which, the mess inclosed came out something quite different from what might have been expected. He said, too, that they sometimes reminded him of mutes at a dead man's door; but what he meant by that was never disclosed to anybody."—*Thoughts on Legal Discontent.* No. 8.

COMMON-LAW CAUSE LISTS, EASTER TERM, 1866.

Court of Queen's Bench.

NEW TRIALS.

FOR JUDGMENT.

Leeds—Mayne v. Binns

FOR ARGUMENT.

Moved Easter Term, 1864.

Ches.—Hughes v. Birkenhead Improvement Commissioners (First action, to be argued with D. To stand over till decision in a similar point in court of error)

—Same v. Same (Second action, Ditto)

—Davies v. Same (Ditto)

Moved Mich. Term, 1864.

Durham—Ecclesiastical Commissioners for England v. Peart (Part heard)

Moved Easter Term, 1865.

Lancaster—Martin v. Smalley & an. (Stands for arrangement)

Moved Trin. Term, 1865.

Midd.—Watts & ora. v. Lewis

Moved Mich. Term, 1865.

Midd.—Springett v. Balls

Midd.—Feltham v. England Lond.—London, Brighton, & South-coast Railway Co. v. Williams

—Sandeman v. Scurr

—Cleveland Iron Co. (Limited) v. Stephenson

—Morgan v. Chetwynd

—Hibbs v. Ross (Part heard)

—Double v. Reynell

—Strong v. Berry

—Naith v. Hay

Manchester—Kelly v. Sherlock

Moved Hil. Term, 1866.

Midd.—Kennard v. Great

Western Railway Co.

—Falcke v. Gooch

—Wood v. Boosey

—Snell v. Tucker

Lond.—Webb v. Rennie

—Turner v. Walker

—Beard v. Goodacre

—Chapman v. Gwyther

Tried during Term.

Midd.—Caustin v. Wheel

Bonnie Mining Co.

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR JUDGMENT.

*Bryant v. Foot

FOR ARGUMENT.

†Hughes v. Birkenhead Improvement Commissioners (New Trial to be argued with this D., stands over)

†Same v. Same (Ditto)

†Davies v. Same (Ditto)

†Jelwald v. Continental Bank Corporation (Limited) (To stand over till issues in fact tried, &c.)

†Le Strange v. Rowe (Part heard, stands over till issues in fact are tried)

†Tydeman v. Carne (Stands over over till probate taken out)

†Hetherington v. Hicks (St. over till issues in fact are tried)

†Bewley v. Rugg (Stands over for arrangement)

†Ecclesiastical Commissioners for England v. Peart (Part heard)

†Keyes & ora. v. Edwards & ora. (Sp. C. to be stated)

*Foster v. Dodd

*Taylor v. Shafto

†Donald v. Suckling

*Greenwood v. Scragg

*Mee v. Parren & an.

†Bankart & an. v. Peckham

*Gillespie v. Newton & an.

*Franklin v. Llantrissant and Taff Vale Junction Railway Co.

†Windus v. Crook

†European Central Railway Co. (Limited) v. Kenby

*Swinford v. Koble

*Clapp & an. v. Great Western Railway Co.

†Rayner v. Ritson

*Nicholson v. Guardians, &c. of Bradfield Union

*Somes & ora. v. Jenkins

†Todd & ora. v. Busco, Bart.

†Drakford v. Piercy

*Smith v. Jenkins

*Lawrence v. Hitch

†Duffett & ora. v. Hutchings

†Bridport Old Brewery Co. (Limited) v. Emanuel

†Taylor v. Trippett

†Fielder v. Briggs

*Hart v. Mayor, &c. of Folkestone

†Reeves & an. v. Watts

†Ireland & ora. v. Livingston

†Lund v. Winfield

†Bailey v. Bowen

*Jupp v. Cook

†Chichester & Wife v. Cobb

†Hulse v. Whitworth

†Sacker v. Goldsack

*Hancock v. London & Ham-

burgh & Continental Ex-

change Bank (Limited)

*Reynolds v. Bewley & an.

†Hunter v. Wykes

Radford v. Potts (Appeal from

County Court of Warwick

*Tyson v. Jones & ora.

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peal from County Court of

Bradford, Yorkshire

*Broomhead v. Bolton.

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Herefordshire ..	Nott v. Bounel.
Dorsetshire	King v. MacHale.
Suffolk	Great Eastern Railway Co. v. Churchwardens of the Parish of Haughley.
Lincolnshire	Reg. v. Blanchard.
London	Humphreys v. Trustees for paving Great Tower Hill.
Worcestershire ..	Bosward v. Power.
Dorsetshire	Carter v. Highway Board of the District of Wareham.
Monmouthshire ..	Brough v. Homfray & ors.
Essex	Great Eastern Railway Co. v. Hudson.
Yorkshire	Reg. v. Smith.
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Weymouth	Reg. v. Ayling.
Durham	Wood & an. v. Bowron.
.....	Ottare & an. v. Craggs.
Lincolnshire	Wray & an. v. West.
Cambridgeshire ..	Whittleford Tradesmen's Benefit Society v. Runham.
Sussex	Reg. v. Guardians of the Poor of Battle Union & ors.
Essex	Brine v. Daunt.
Metropolitan Police District ..	Wells v. Hubble.
Bristol	Thomas v. Rouch.
Middlesex	Reg. v. Antonio Viasani.
Staffordshire ..	Smith v. Redding.
Ipswich	Ipswich Dock Commissioners v. Overseers of St. Peter, Ipswich.
Nottinghamshire	Rayner v. Horne.
Buckinghamshire	Eustace v. Sargent.
Yorkshire	Wakefield Local Board of Health v. West Riding and Grimsby Railway Co.
Surrey	Reg. v. Phillips and Wigan.
Sussex	Winson v. Jeffery.
Sheffield	Unwin & ors. v. Clarke.
Merionethshire ..	Price v. Williams.
Durham	Weardale District v. Trustees of the Alston Roads.
Kent	Reg. v. Sawbridge Erle Drax.
Monmouthshire ..	— v. Foote.
Yorkshire	Maw v. Witty.
Westmorland ...	Stewart v. Fell.
Liverpool	Whitfield v. Bainbridge.
London	Reg. v. Treasurer of St. Bartholomew's Hospital.
Hampshire	Olding v. Wild.
Northamptonsh.	Chapman v. Chambers.
Cambridgeshire	Searle v. Reynolds.

Court of Common Pleas.

NEW TRIALS.

FOR ARGUMENT.	Rumbelew v. Nicholson
<i>Moved Mich. Term, 1868.</i>	Acebal v. Besley
Midd.—Packer & an. v. The Great Western Railway Co.	Bransby & an. v. East London Banking Co.
<i>Moved Hil. Term, 1868.</i>	Rivers v. Knowles
Kynmaird (Visct.) v. Leslie	Wynne v. Best
Jordan & an. v. Moore	Stanhope v. Thorsley
Gilbert & ors. v. Hassall	Kitchen & an. v. Hawkins
Hilmer & an. v. Smith	Phillips & an. v. im Thurm
England v. Marsden	Ling v. Bretton & an.
Tallerman v. Rose & ors.	Bankart & an. v. Bowers
Harrison v. Seymour	Robinson v. Wray.

DEMURRER PAPER.

SPECIAL ARGUMENTS.

<i>Tuesday, April 24.</i>	Harrison v. Seymour
Johnson & an. v. Royal Mail Steam-packet Co.	Lawin v. Brown
Arbuthnot & ors. v. Streck-eisen	Great Northern Railway Co. v. Taylor
Consolidated Bank (Limited) v. Smith	Donovan v. Mahony
M'Andrew v. Chapple	South Swaledale Lead Mining Co. v. Roberts & ors.
Dubois & ors. v. Womack	
Same v. Same	<i>Tuesday, May 1.</i>
Lane & ors. v. Nixon	Appleby v. Meyers
Wilson v. Local Board of Health, Kingston-upon-Hull	Greenberg v. Ward & an.
Same v. Same	Gosach v. Emanuel
	M'Culloch & an. v. Langue
	Cooper v. Strong
	Smith v. Littledale.

ENLARGED RULES.

Forth & ors. v. Guppy & an.	Lee v. Newton
Brenner & ors. v. Hull	Mills v. Mayor, &c. of Colchester
Lawrence v. North London Railway Co.	Browne & ors. v. Silver & an.

CUR. ADV. VULT.

Sheldon v. Mayor, &c. of Staley Bridge	Guppy & an. v. Frenth & ors.
Palmer v. London and South-western Railway Co.	Kilston & ors. v. Empire Marine Insurance Co.

Court of Exchequer.

NEW TRIALS.

Noble & an. v. Freeman	Chant v. South-eastern Railway Co.
Brabner v. Macomm	Peerce & an. v. Brooks
Platt v. Higgins	Vandenbergh v. Spoones
Juniper v. Vestry of Bermondsey	Bolinbroke & Wife v. Kerr.
Linsay v. Robinson	

SPECIAL PAPER.

Cooke v. Mostyn	Blumber & an. v. Rose & an.
Campbell v. Dufaur	Webster & an. v. Gillespie
Lord Colchester v. Kewney	Green v. Lewis
Ball v. Nash	Elford v. Tichborne
Millett v. Casley	Pinder v. Coqui.

PEREMPTORY PAPER.

To be called on the first Day of Term after the Motions, and to be proceeded with the next Day, if necessary, before the Motions.

Hamblett & an. Trustees, &c. v. Williams	Whitehouse v. Ensor.
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ERRORS AND APPEALS.

Fletcher v. Rylands (E. & Ans. heard Feb. 8).

Imperial Parliament.

HOUSE OF COMMONS.—Monday, April 9.

In committee of supply, on the vote of £600L. for the Patent Office,

Mr. *Bovill* called attention to the utter inadequacy of the accommodation afforded by the existing Patent Office. The collection of scientific works, perhaps the finest in the world, were stowed away in a mere passage, which was ill ventilated, and to which the light of day had no access. The shelves were insufficient for the books, and the accommodation for the readers was even still more inadequate. Over and over again the attention of the Treasury had been directed to the subject, and repeatedly the suggestion had been enforced upon them that the surplus on the fees paid by patentees, under the act of 1852, should be made applicable for the purpose of improving the existing arrangements. Still nothing had been done. He proposed that the vote should be postponed.

The Attorney-General thought the matters referred to in the speech of the hon. gentleman might with advantage be deferred until such time as the questions were determined whether patents were to be maintained, and, if so, upon what footing. He hoped that the whole subject would, at no distant date, be considered by Parliament, and that no private interests would be allowed to stand in the way of the system being placed upon a more satisfactory footing.

Mr. *Freshfield* did not understand Mr. *Bovill* to ask any more than this—that a portion of the funds derived from the payments of patents should be devoted to the proper exhibition of patentees. He thought that that was a fair proposition, and one that the House would assent to. As, however, the Government did not seem to have given an adequate consideration to the subject, it appeared to him that the present vote, as well as that for the Patent Museum, should be postponed. The Attorney-General had himself warned them not to deal with this important subject in a fragmentary manner, and he trusted that that hon. and learned gentleman would bear his own advice in mind when another subject came under discussion in the course of a few days.

Mr. *F. Powell* said, that the questions of the Patent Office and of the Patent Museum could not be separated, and he thought that they ought not to agree to a vote for the former purpose until they had determined what course they should adopt with regard to the latter.

Mr. *C. Bentinck* thought that the vote should be postponed, especially as they had distinct warning that the Government had it in contemplation to spend a further large sum of money upon a Patent Museum at Kensington. The present state of that Museum was, indeed, a disgrace to the country; for it was more like the shop of a marine-store dealer than anything else.

Mr. *Childers* reminded the House that the vote before them was not a new vote. It was merely to carry on the construction of a building sanctioned last year, and which was now in course of erection. Whatever course they might adopt with regard to the Patent Museum, it was absolutely necessary to finish that building, in order to afford the accommodation which was immediately required for the purposes of the Patent Office.

Mr. *Henley* thought that the statement of the Secretary of the Treasury was hardly consistent with that made by the Attorney-General. The latter did not deny that the accommodation of the Patent Office was at present very defective, but he objected to any large scheme being entertained until they had arrived at a conclusion as to the propriety of retaining or abolishing the patent laws. But if that was the opinion of the Government, they ought to give the House some assurance that the subject should be looked into, and that some decision should be arrived at as soon as possible.

The Chancellor of the Exchequer said that those who contended that the Government should legislate on the patent laws should recollect what they had on their hands at the present moment. It would have been impossible for them to take up the subject during the present session, when they had to deal, amongst other matters, with the amendment of the bankruptcy laws. No doubt the Government would propose a measure on the subject as soon as they had an opportunity, if the matter was not previously taken up by

some independent member. In the meantime, it was absolutely necessary that this vote should be agreed to, in order to provide funds for the completion of a building now in course of erection.

After some further discussion,

The Chairman having decided that it was not competent for a member to move the adjournment of a vote,

Mr. *Bovill* withdrew his amendment, and the vote was agreed to.

The Cattle Assurance Bill was read a second time.

The Public Offices (Site) Bill was read a third time and passed.

The Cattle, &c. Contagious Diseases Bill was read a second time.

The Ecclesiastical Leases (Isle of Man) Bill was read a third time and passed.

Wednesday, April 11.

INNS OF COURT BILL.

On the order of the day for the second reading of this bill, Sir *G. Bowyer* intimated that it had received the assent of the benchers of the different Inns of Court, but that he was unwilling to proceed with it in the absence of the Attorney-General.

Mr. *Ayrton* hoped that the hon. baronet would consider well before he proceeded with the bill, which would be found to be of a most extraordinary character. It was the first time that any body of men had presumed to come to the House for the purpose of asking for powers of indefinite inquiry, and of summoning before them the whole community, under pains and penalties, to be examined on such inquiry.

Mr. *Denman* defended the principle of the bill, and observed, that it simply provided a better tribunal than now existed for the investigation of charges against barristers.

Mr. *J. Locke* considered the bill as extremely objectionable, and hoped that it would not be proceeded with.

Sir *F. Goldsmid* said, that, so far as he could see, the bill merely enabled the benchers to exercise in an effectual manner the powers which they at present possessed.

The order for the second reading was then postponed until that day week.

COURTS OF LAW.

In committee of supply, Mr. *Childers* said, that last year 700,000L. had been taken for the purchase of the site of the new courts of justice. That sum had not been expended during the last twelvemonth, and it had, therefore, become necessary to revote 660,000L. He, therefore, moved a resolution to that effect.

In answer to Mr. *Beresford-Hope*,

Mr. *Couper* said that there had been no meeting of the Courts of Law Commissioners since the resolution passed by the House of Commons, on a former evening, in regard to the architectural competition for the new courts.

The motion was agreed to, and the House resumed.

The Railway Clauses Bill was read a second time.

The Cattle and Contagious Diseases Bill passed through committee.

The Railways (Guards and Passengers Communication) Bill was read a second time.

BILLS IN PROGRESS.

SALE OF LAND BY AUCTION.

Bill (as amended in Committee and on Report) for amending the Law of Auctions of Estates.

Sect. 1. Act may be cited as "The Sale of Land by Auction Act, 1866."

2. This act shall commence and take effect on the 1st August, 1866.

3. "Auctioneer" shall mean any person selling by public auction any land, whether in lots or otherwise:

"Land" shall mean any interest in any messuages, lands, tenements, or hereditaments of whatever tenure.

4. Every auctioneer shall, previously to taking any bidding at any sale by auction of land, read to the persons assembled the conditions of sale: provided nevertheless, that where sales by auction of land are commonly held in a hall or room where

a set of conditions are printed and exhibited on the inside walls so that they can be conveniently read, and the special conditions refer to them as applicable to the particular sale, it shall not be necessary for the auctioneer to read such general conditions.

5. The auctioneer shall not at any sale by auction or land make any bidding for or on behalf of himself or any other person.

6. If in the particulars or conditions of sale by auction of any land it is stated that such land will be sold without reserve, or to that effect, then it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person.

7. Where any sale by auction of land is declared, either in the particulars or conditions of such sale, to be subject to a reserved price, then if no bidding is made equal to or higher than such reserved price, the auctioneer shall declare that such land is not sold, but has been bought in on account of the owner; but in all such cases the amount of such reserved price shall be stated in writing, signed by the seller or his agent, and delivered to the auctioneer previous to such sale: provided always, that it shall be lawful for such auctioneer to accept any bidding at any such sale made after such declaration shall have been made, being equal to or higher than such reserved price.

8. Where any sale by auction of land is declared, either in the particulars or conditions of such sale, to be subject to a right for the seller or his agent to bid once for each lot, or generally to bid as often as he shall think proper, the amount of the sum below which the seller does not intend to sell the land shall in like manner be stated in writing, signed by the seller or his agent, and delivered to the auctioneer previous to such sale.

9. Provided always, that in no case where a price is reserved or a right to bid, whether limited or general, is reserved to the seller or his agent, shall it be lawful for the seller to appoint any person to bid, or for the auctioneer to take knowingly any bidding from any such person.

10. If at any sale by auction of land no declaration is made that such sale will be without reserve, or words to that effect, and no right to bid, whether limited or general, shall be reserved to the seller or his agent, it shall be lawful for the seller to appoint or nominate as a person to bid for him any one person other than the auctioneer, but not more than one, to bid on his behalf at such sale: provided, that the sum beyond which such person shall not bid be stated in writing, signed by such seller or his agent, and which signed writing shall be delivered to such person previous to such sale, and notice in writing of such appointment and of the sum fixed as aforesaid shall be delivered to the auctioneer previous to such sale: provided always, that it shall not be lawful for any such person to bid on his own bidding, or beyond the sum stated in such signed writing as aforesaid, or for the auctioneer to take knowingly any bidding from such person beyond such sum.

11. If at any sale by auction of lands any bidding is made by any auctioneer or person appointed to bid as aforesaid, or more than one such person shall be employed at such sale, in contravention of the rules of this act, such sale shall be void against any bona fide bidder to whom such land may be knocked down, and who shall be unwilling to complete such purchase.

12. If at any sale by auction of land, such land is knocked down to the bidding of any person bidding in contravention of the rules of this act, the person making the last bona fide bidding at such sale may elect to become the purchaser of such land at the price of such last bona fide bidding, provided such bidder deliver, within six days from the day of sale inclusive, notice in writing of such his intention to the auctioneer of such sale, or leave the same at his place of business, and do, at the same time, pay or tender to such auctioneer, or the person acting for him there, the amount of deposit required by the particulars or conditions of sale.

13. Any auctioneer who knowingly acts in contravention of the rules of this act shall be liable to any bona fide bidder in an action for damages occasioned by loss of time, travelling expenses, and advising with counsel or solicitors on the conditions of sale.

14. The practice of opening the biddings on any sale by auction of land under or by virtue of any order of the High

Court of Chancery shall, from and after the time appointed for the commencement of this act, be discontinued, and the highest bona fide bidder at such sale, provided he shall have bid a sum equal to or higher than the reserved price (if any), shall be declared and allowed the purchaser, unless the court or judge shall, on the ground of fraud or improper conduct in the management of the sale, upon the application of any person interested in the land (such application to be made to the court or judge before the chief clerk's certificate of the result of the sale shall have become binding), either open the biddings, holding such bidder bound by his bidding, or discharge him from being the purchaser, and order the land to be resold upon such terms, as to costs or otherwise, as the court or judge shall think fit.

15. Except as aforesaid, nothing in this act contained shall affect any sale of land made under or by virtue of any order of the High Court of Chancery in England, of the High Court of Chancery in Ireland, or of the Landed Estates Court there, or of the Court of Chancery of the County Palatine of Lancaster, or of any county or other court having jurisdiction in equity.

16. This act shall not extend to Scotland.

LAW OF CAPITAL PUNISHMENT AMENDMENT.

Bill for amending the Law relating to Murder, and for giving further Protection to new-born Children, and for altering the Manner in which Capital Sentences are carried into execution, in England and Ireland.

[Lord Chancellor.]

I.—PRELIMINARY.

Sect. 1. This act may be cited as "The Law of Capital Punishment Amendment Act, 1868."

2. This act shall not extend to Scotland.

3. The enactments described in the first schedule to this act are hereby repealed.

II.—MURDER.

4. Murder shall be of two degrees, namely, murder of the first degree and murder of the second degree.

5. Murder of the first degree shall include the following cases, namely,—

First. Where any person murders another with express malice aforethought against the person murdered or any other person, such malice being found by the jury as matter of fact:

Secondly. Where any person murders another with a view to and in or immediately before or immediately after the commission by such person of any of the following felonies, namely, rape, burglary, robbery, or piracy, or the felony of unlawfully and maliciously setting fire to any dwelling-house, any person being therein:

Thirdly. Where any person murders another for the purpose of thereby enabling himself or any other person to commit any of the above-mentioned felonies:

Fourthly. Where any person murders another in the act of escape from, or for the purpose of thereby enabling himself or any other person to escape from or avoid, lawful arrest or detainer, immediately after he or such other person has committed or attempted to commit murder or any of the above-mentioned felonies:

Fifthly. Where any person murders a constable or other peace officer acting in the discharge of his duty.

6. On a conviction for murder of the first degree, the court may abstain from pronouncing judgment of death on the offender, and in that case the proper officer shall ask if the offender has anything to say why judgment of death should not be recorded against him.

If the offender does not allege anything sufficient in law to arrest or bar judgment of death, the court shall order judgment of death to be entered of record against him, and thereupon the proper officer shall enter that order of record against the offender, and shall also enter judgment of death of record against him in the accustomed form, as if judgment of death had been actually pronounced in open court against him by the court.

7. The record of judgment so entered shall have the like effect to all intents, and be followed by all the like conse-

quences, as if judgment of death had actually been pronounced against the offender in open court, but execution thereof had been resisted.

8. On a conviction for murder of the first degree, if the court does not think fit to order judgment of death to be recorded, the court shall pronounce judgment of death against the offender in open court, and the offender shall suffer death as a felon.

Judgment of death shall be pronounced in the form at the passing of this act required by law or accustomed, with such modifications as are made necessary by the provisions of this act, and (except as in this act provided respecting execution of judgment) the judgment may be executed, and all proceedings thereon and in respect thereof may be had and taken, in the same manner in all respects as at the passing of this act judgment of death, and all proceedings thereon and in respect thereof, are required by law or accustomed to be executed, had, and taken.

9. Murder in the second degree shall include all cases of murder not included in murder of the first degree.

10. Every person found guilty of murder of the second degree shall, at the discretion of the court, be kept in penal servitude for life, or for any term not less than seven years.

11. In an indictment or inquisition for murder of the first degree it shall be sufficient to charge that the accused did feloniously and wilfully kill and murder the deceased and did thereby commit murder of the first degree.

In an indictment or inquisition for murder of the second degree it shall be sufficient to charge that the accused did feloniously and wilfully kill and murder the deceased and did thereby commit murder of the second degree.

In an indictment against an accessory to a murder it shall be sufficient to charge the principal with the murder in manner aforesaid, and then to charge the accused as an accessory in manner accustomed at the passing of this act.

12. On an indictment for murder of the first degree the accused may be found guilty (according to the evidence) either of murder of the first degree or of murder of the second degree or of manslaughter.

On an indictment for murder of the second degree the accused may be found guilty (according to the evidence) either of murder of the second degree or of manslaughter.

III.—PROTECTION OF NEW-BORN CHILDREN.

13. If any person during the birth of a child, or within seven days thereafter, unlawfully and maliciously wounds a child or inflicts on it grievous bodily harm, every such person shall be guilty of felony, and on conviction thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years or less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

14. On an indictment under this act for the felony of wounding a child or inflicting on it grievous bodily harm, it shall not be necessary to prove that the child was completely born alive.

15. The provisions of this act respecting the felony of wounding a child or inflicting on it grievous bodily harm shall not preclude in any case an indictment for murder or for manslaughter or for wounding or causing grievous bodily harm with intent to commit murder.

16. On an indictment under this act for the felony of wounding a child or inflicting bodily harm, the accused shall not be entitled to be acquitted on the ground only that the offence amounted to murder or to manslaughter or to the felony of wounding or causing grievous bodily harm with intent to commit murder.

17. If any person tried for the murder of a child is acquitted thereof, the jury may (according to the evidence) find him or her guilty of the felony under this act of wounding the child or inflicting on it grievous bodily harm (for which purpose it shall not be necessary to prove that the child was completely born alive), and thereupon the offender shall be liable to the like punishment as if he or she had been convicted on an indictment for the last-mentioned felony.

18. On an indictment for the murder of a child it shall not be lawful for the jury to find the accused guilty of the offence of endeavouring to conceal the birth of the child.

IV.—EXECUTION.

19. Execution of judgment of death shall be done within the walls of the prison in which the offender is confined at the time of execution.

20. The sheriff charged with the execution, and the governor, chaplain, and surgeon of the prison, and such other officers of the prison as the sheriff requires, shall be present at the execution.

Any justice of the peace for the county, borough, or other jurisdiction to which the prison belongs, and such persons as it seems to the sheriff or the visiting justices of the prison proper to admit within the prison for the purpose, may also be present at the execution.

21. As soon as may be after judgment of death has been executed on the offender, the surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, and deliver the same to the sheriff.

Thereupon the sheriff and the governor and chaplain of the prison, and such justices and other persons present (if any) as the sheriff requires or allows, shall sign a declaration to the effect that judgment of death has been executed on the offender.

22. The coroner of the jurisdiction to which the prison belongs wherein judgment of death is executed on any offender shall, within twenty-four hours after the execution, hold an inquest on the body of the offender, and the jury at the inquest shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender; and the inquisition shall be in duplicate, and one of the originals shall be delivered to the sheriff.

No officer of the prison, or prisoner confined therein, shall in any case be a juror on the inquest.

23. The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him.

24. If any person knowingly and wilfully signs any false certificate or declaration required by this act, he shall be guilty of a misdemeanour, and on conviction thereof shall be liable, at the discretion of the court, to imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

25. Every certificate and declaration and the duplicate of the inquisition required by this act shall in each case be sent with all convenient speed by the sheriff to one of her Majesty's Principal Secretaries of State, and printed copies of the same several instruments shall be forthwith exhibited, and shall for — hours at least be kept exhibited on or near the principal entrance of the prison within which judgment of death is executed.

26. The duties and powers by this act imposed on or vested in the sheriff may be performed by and shall be vested in his undersheriff, or other lawful deputy acting in his absence and with his authority, and any other officer charged in any case with the execution of judgment of death.

The duties and powers by this act imposed on or vested in the governor of the prison may be performed by and shall be vested in the deputy governor (if any) acting in his absence and with his authority, and (if there is no officer of the prison called the governor) by the keeper or other chief officer of the prison and his deputy (if any) acting as aforesaid.

The duties and powers by this act imposed on or vested in the surgeon may be performed by and shall be vested in the chief medical officer of the prison (if there is no officer of the prison called the surgeon).

The provisions of this act relating to the chaplain shall extend to and include all officiating ministers attached to the prison.

27. The forms given in the second schedule to this act, with such variations or additions as circumstances require, shall be used for the respective purposes in that schedule indicated, and according to the directions therein contained.

21. The provisions of this act respecting execution shall apply only in cases of murder.

V.—MISCELLANEOUS.

29. So much of the following acts, namely—

The act of the 12 Geo. 3 (c. 24), "for the better securing and preserving his Majesty's Dockyards, Magazines, Ships, Ammunition, and Stores."

An Act of the 7 Will. 4 & 1 Vict. (c. 88), "to amend certain Acts relating to the Crime of Piracy"—is hereby repealed as imposes the punishment of death in any case therein provided for; and in lieu thereof any person by those acts respectively made punishable with death shall be liable, at the discretion of the court, to be kept in penal servitude for life, for any term not less than — years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

30. So much of the act of the 2 Geo. 2, c. 25, "for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes, or other securities for payment of money," is hereby repealed as imposes the punishment of death on any person voluntarily escaping or breaking prison in the case therein provided for.

31. The following sections of the act of the session of the 24 & 25 Vict. c. 100, "to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person" (as amended by any subsequent act relating to penal servitude), are hereby incorporated with this act, and shall be read as if they were here re-enacted, namely, sects. 66 to 71 (both inclusive) and sect. 77; and for this purpose the expression "this act" used in those sections shall be taken to mean the present act.

32. Nothing in this act shall affect the meaning of the term "murder" in any other act, or alter the law relating to accessories.

33. Nothing in this act shall affect her Majesty's royal prerogative of mercy.

SCHEDULES.

THE FIRST SCHEDULE.

Enactments repealed.

24 & 25 Vict. c. 11, in part.—An Act to consolidate and amend the Statute Law of England and Ireland, relating to Offences against the Person, in part, namely,—sects. 1, 2, and 3, and so much of sect. 6 as provides what it shall be sufficient to charge in an indictment for murder, or an indictment against any accessory to any murder; and the proviso in sect. 60, that if any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the jury by whose verdict such person shall be acquitted to find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret disposition of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth.

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THE JURIST.

LONDON, APRIL 21, 1866.

In the case of *Bullen v. Sharp* (11 Jur., N. S., part 1, p. 506; 12 Id. 247), Erle, C. J., Byles, Smith, and Shee, JJ., and Pigott, B., being of opinion that the defendant was liable as a partner with his son, and Pollock, C. B., Channell and Bramwell, BB., and Blackburn, J., being of opinion that the defendant was not so liable, it must now be considered as settled, by a minority of four to five, that an agreement to participate in the profits of a business under the circumstances of that case, does not render the persons who participate in the profits liable for each other as partners to the creditors of the business. If there is anything strange or awkward in our statement of the doctrine, it only reflects our inability to receive the doctrine itself otherwise than as something strange and unintelligible.

The action was brought upon a policy of marine insurance, subscribed by W. Sharp, jun., and the circumstances under which it was sought to make his father, W. Sharp, sen., liable as a partner in the risk were stated in a special case for the opinion of the Court.

In order to procure the admittance of his son as a member of Lloyds, W. Sharp, sen., engaged with Mr. Fenn, an underwriter, of Lloyds, to provide and hold 5000*l.* to answer his son's engagements. Thereupon, W. Sharp, jun., was elected a member of Lloyds, and entered into an agreement with Mr. Fenn, under which the latter was to manage and control the business of an underwriter, for and in the name of Sharp, jun., for a term of three years from the 18th March, 1857, after which the arrangement was to be determined by either party at three months' notice. Fenn was to have a salary of 300*l.* per annum, and to be allowed to carry on business as an underwriter on his own account. No risk was to be taken by Sharp, jun., personally, without the consent of Fenn, and Fenn was to adjust the policies, losses, and averages.

The business being profitable, the son, in November, 1858, with his father's concurrence, entered into an agreement with Fenn to increase the amount of the risks sanctioned by the previous arrangement, and to increase the payment to Fenn. Shortly after this, the son wrote to the father a letter, to the following effect:—

"In consideration of your guaranteeing me to the extent of 5000*l.* in the business of an underwriter until I make from the profits thereof the clear sum of 5000*l.*, I agree to pay you during your life, if I so long live, an annuity of 500*l.*, being 10*l.* per cent. per annum on 5000*l.*; and, further, if, at the end of three years from the date hereof, it shall appear that one-fourth of the net average annual profits during that period made by me shall amount to more than 500*l.*, then the said annuity shall thenceforth be increased to a yearly sum equal to one-fourth of such net average annual profits made by me in the said busi-

ness during the said three years. And in no case are you to be deemed a partner with me in the said business. Jan. 1859."

In August, 1859, on the marriage of W. Sharp, jun., he executed a settlement, reciting the above-mentioned documents, and thereby assigned all the profits then in the hands, and thereafter to come to the hands, of Fenn on account of the said business, to W. Sharp, sen., and J. Donnison, in trust, in the first place, to pay the said annuity to W. Sharp, sen., and then to pay to W. Sharp, jun., an annuity of 500*l.*, and to accumulate the surplus profits of the business until the same, with the accumulations of the dividends on certain railway stock thereby settled, should amount to 3500*l.*, and then to increase the allowance to Sharp, jun., and ultimately to provide for the repayment to Sharp, sen., of any advances under his guarantee, as therein mentioned. Under this arrangement, therefore, Sharp, sen., became entitled to receive, jointly with his co-trustee, the whole profits of the business for at least three years from January, 1859, and to retain for his own use one clear fourth of those profits.

The policy on which the action was brought was dated within the three years, namely, on the 22nd December, 1859. Sharp, jun., became a bankrupt on the 19th February, 1860. The plaintiffs, being ignorant of the arrangement above mentioned, proved their claims in his bankruptcy in September, 1861, and subsequently commenced the present action against the father.

The Court of Common Pleas, consisting of Erle, C. J., Byles and Smith, JJ., unanimously gave judgment for the plaintiffs, on the ground that, by the joint effect of the agreement with his son and the settlement, the defendant was to receive one-fourth of the profits of the business.

The case was heard upon a writ of error in the Exchequer Chamber, by Pollock, C. B., Bramwell, Channell, and Pigott, BB., and Blackburn and Shee, JJ.

Shee, J., and Pigott, B., concurred with the Court below; but the judgment was reversed by the majority of the Court of Appeal.

Blackburn, J., relied on the carefully considered judgments of Lords Cranworth and Wensleydale in *Cox v. Hickman* (7 Jur., N. S., part 1, p. 105; 8 H. L. C. 268), as giving the rationale of that decision, to the effect that a participation of profits does not per se constitute a partnership, but that the test of partnership liability is, whether "it is such a participation of profits as constitutes the relation of principal and agent between the person receiving the profits and those actually carrying on the business;" and applying that principle to the case before the Court, he expressed his opinion to be, that the agreement constituted by the letter of the son to the father was not an arrangement by which the father agreed to carry on the trade in the name of his son, nor even one in which he stipulated for a portion of the profits of the trade, but it was a purchase of an annuity secured only by the personal promise of the son; and further, that by the settlement, the trustees, taking the profits for the purpose of keeping them as a reserved fund to meet the

emergencies of the business, clearly did not cause the business to be carried on for them as principals, which, according to *Cox v. Hickman*, was the true question; and that the settlement did not, by confirming the previous agreement between the father and the son, create a partnership between them, if that agreement had not that effect. Paraphrasing the language of Lord Cranworth in *Cox v. Hickman*, "The son receives the benefit of the profits as they accrue, though he has precluded himself from applying this portion of them to any other purpose than the payment of this annuity, for which he was already liable. The trade is not carried on by, or on account of, the annuity creditor." The above is the substance of the reasons given by Blackburn, J., for his decision; and, before passing to the other judgments, we will only remark that it takes no notice of the fact, that the contract by the son was not merely to pay his father an annuity, but to pay him one-fourth of the profits for three years.

Channell, B., admitted that, taking from *Cox v. Hickman* the test to be delegation or agency, the father would be liable, if the facts shewed that the business was really the business of the defendant, carried on for his benefit and not of his son, or for his benefit together with his son. "In that case, having accepted the benefit of contracts made on his behalf when beneficial, he would be precluded from repudiating the authority of the person making them when they proved unprofitable." [This, we may remark, is the much abused rule in *Waugh v. Carver*.] His Lordship proceeded to shew that the facts in the case did not shew such an arrangement, but he treated it as a contract for a fixed amount, and a mere mortgage of the profits to secure that annuity, and took no notice of the agreement to give to the father one-fourth of the profits in any event.

Bramwell, B., said that the defendant could only be liable as having given authority to the clerk who signed his son's name to the policy thereby to bind himself. If, contrary to the intention of the parties, he is to be taken to have given such authority, it must be from some force in the nature of the transaction itself—which might be in some cases—as if a person tried to carry on a business involving the purchase of goods on credit, through an agent, whether a partner or not, so that on the purchase he became entitled wholly or in part to the goods, he would be liable, for the contract being made with him or for his benefit, must bind him. If the matter had stopped on the agreement that the father should have an annuity of 500*l.*, or one-fourth of the profits if that exceeded 500*l.*, there would be no pretence for saying that the defendant was liable. The settlement made no difference, except that it made the father a trustee: but as Donnison not being a partner before, did not become a partner by reason of his trusteeship, so Sharp, sen., not being a partner before, did not thereby become a partner. His Lordship then proceeded in these terms:—

"The plaintiffs say that the defendant is a partner with his son, and that if not partners *inter se*, they are so as regards third parties—a most remarkable ex-

pression. Partnership means a certain relation between two parties. How, then, can it be correct to say that A. and B. are not in partnership as between themselves; they have not held themselves out as being so; and yet a third person has a right to say they are so, as relates to him? But that must mean *inter se*, for partnership is a relation *inter se*, and the word cannot be used except to signify that relation. A. is not the agent of B.; B. has never held him out as such, yet C. is entitled, as between himself and B., to say that A. is the agent of B. Why is he entitled, if the fact is not so, and B. has not so represented?"

We may here conveniently interrupt our abridgment of the case, in order to state the meaning of the expressions "partnership *inter se*," and "partnership as to third persons," as they have always been used and understood with reference to the law of partnership as it stood until it was unsettled by *Cox v. Hickman*. That the learned Baron, whose judgment we have been quoting, should find fault with these expressions, is to be attributed, partly to the circumstance that he has always dissented from the doctrine in *Waugh v. Carver*, and partly to the fact that the expressions themselves are used with different meanings on different occasions. Partnership means participation in profits, and it means nothing else, just as agency means the relation between two persons, one of whom does an act for and under the authority of another. But a third person will be entitled to treat A. as a partner with B., although he is not really so, if he has represented himself to be so, just as he may treat A. as principal, and B. as his agent, if A. has allowed himself to be held out as principal. This last is the proper meaning of the expression "partnership, as regards third persons"—there being no real partnership; and the expression is perfectly accurate. On the other hand, A. and B. may agree to share the profits of a business, but may also agree, that beyond the right to receive his share of the profits, A. shall have none of the rights of control, interference, or action in the business, which would otherwise be implied from his right to participate in the profits. This is commonly, but inaccurately, called an agreement not to be partners *inter se*. As the word "partner" means participator in profits, an agreement to participate in profits and not to be a partner is a contradiction in terms; but it has acquired the meaning of an agreement to forego all the rights of a partner, except the bare right to take part of the profits. And the correlative to this inaccurate denomination of the status of the parties, is the inaccurate or redundant statement criticised by Baron Bramwell, that they are notwithstanding partners *quoad* third persons. In fact, they are partners simply; but as between themselves, one of them is shorn of every right, save the one essential right to take part of the profits.

In a question of liability to creditors, trading upon credit is necessarily implied. And if A. stipulates that he shall be entitled to participate in the profits of such a business, as the profits are the only end and aim for which the several transactions in the business are carried on, he must necessarily be held to stipulate that, among other things, debts shall be incurred in order

to reach the profits in which he is to share. For if A. and B. agree that B. shall buy upon credit and sell goods for the equal benefit of himself and A., that is an agreement for a partnership and for an agency; but all that is necessarily involved in an agreement, that A. shall take a share of the profits made by B. in buying goods upon credit and selling them. If, in substance, the agreements and transactions are identical, why should a mere variation of language make any difference? or, as Mr. Baron Bramwell, in criticising the absurd, or perhaps absurdly misreported, dictum of Lord Eldon in *Ex parte Hamper*, says:—"How can one set of words between A. and B. give C. a right, and the same thing in other words not?" Yet the learned judge immediately proceeds to rest the effect of the arrangement upon words, that is to say, upon the terms in which the parties to the arrangement choose to express it. "Such a law is a law of surprise and injustice, and against good policy. It fixes a liability on a man contrary to his intent and expectation, and without reason, and gives a benefit to another which he did not bargain for and ought not to have, and prevents that free use of capital and enterprise which is so important." In fact, as every one knows, there is no surprise at all. These agreements are drawn upon instructions to give them such a shape as, if possible, to protect the capitalist from liability to the persons who give credit in order that he may make a profit; and they are, or were, until the law was unsettled in favour of reckless and dishonest "enterprise," always returned with a note by the draftsman, that if A. is, in substance, to share in the profits, he cannot escape liability. On the other hand, the creditor, though he may be ignorant of what is studiously kept from his knowledge, always intends to hold every one liable who can be proved to have been entitled to derive a profit from the transactions in which the credit was given. We have not sufficient space to complete our remarks on this important case; and we may, possibly, resume the consideration of it on another occasion. In the meantime, we recommend to the Council of Law Reporting, who have a taste for "cool headers," the following header for their report of *Bullen v. Sharp*:—

"When a person is entitled to share in the profits of a business, he is not liable to the creditors of the business, if he has agreed with the person who conducts it that he shall not be so liable.

"The passing of the stat. 28 & 29 Vict. c. 86, was wasteful and ridiculous excess—semble."

THE INNS OF COURT BILL.

It would not perhaps be possible to form a Court of discipline over the bar otherwise than as a Committee of the Benchers of the Inns of Court, though no one who recollects the evidence given in Mr. Seymour's case, and the decision of the Benchers of the Middle Temple thereon, can say that such a tribunal is likely to be satisfactory. At least, with an appeal to the judges, there would be little danger of oppres-

sion. But to regulate the jurisdiction which the Benchers have always exercised over the members of their own inn is one thing, and to give to such a self-elected irresponsible body the same powers of "compelling the attendance of parties and witnesses, and the production of papers and documents, and of punishing for contempts, and all other the powers which by law belong to the High Court of Chancery or Court of Queen's Bench," is a very different thing; and we cannot doubt that so extravagant a proposal will not be listened to by either House. It is scarcely necessary to criticise the language of this clause, which purports to give to the judicial committee in question concurrent jurisdiction in every matter under the sun with the Court of Queen's Bench and the Court of Chancery.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—When, on the first day of Michaelmas Term, in the year of grace, 1865, certain gentlemen took their places in the different courts of law and equity, as the chosen representatives and assistants of the "Council of Law Reporting," we, lawyers, were encouraged to expect great things. "Take tickets for our forthcoming series of ordinaries, price 5l. 5s., to cover the cost of your entertainment for the space of one whole year," insisted the council, "and we will shew you a thing or two. For the first time in your existence you shall know what it is to sit down to a well-ordered and wholesome repast, and loathe the garbage on which you have hitherto been accustomed to feed. We engage to provide the best of viands, the most skilful and cleanliest of cooks. Our *pièces de résistance* shall be as nutritious and invigorating as those served up to your forefathers by that eminent cordon bleu, Edward Coke. Your palates shall be tickled with delicacies short and crisp as those tossed up for the happy practitioners of his time by Edmund Saunders, of pleasant and immortal memory. We will bring to bear upon your entertainment all the acumen of a Blackburn, a Cresswell, and a Welsby, unaccompanied by the dilatoriness and want of punctuality, which, it must be confessed, somewhat marred the fair fame of those renowned artistes."

"At a dinner so various, at such a repast,
Who'd not be a glutton and stick to the last?"

thought we, and paid our money.

Well, Sir, the 1st January, 1866, arrived in due course, and we were all expectation. "The guests were met, the feast was set," the covers were removed, and lo! before us appeared the old familiar manna on which we, legal Israelites, had so long subsisted, and against which the council had taught us to kick and rebel; but where were the promised quails? To drop metaphor, we found, as we had all along suspected, that reporting is reporting, whether carried on under the sanction and superintendence of a "council," or a less dignified form of management. We found, upon comparison, that the cases in the "Law Reports" were in some instances not very much better, and in others not very much worse rendered than in the pages of our ancient friends, The Jurist and Law Journal. Still, not having formed too extravagant hopes, our disappointment was the more endurable; and, after all, if there was nothing to challenge ex-

cessive admiration, there was, on the other hand, but little to cavil at in our newly-made acquaintance. We, therefore, accepted, without objection or comment, the February and March instalments of his lucubrations.

But, with the April issue of the work appeared a fresh feature, viz. the first number of the appellate series; and here it must be confessed, by his most strenuous supporters, that our young friend falls short of the mark. Let his subscribers and readers turn to the report of *Jack, App., Isdale, Resp.*, and their admiration will scarcely be of the kind termed respectful. If Lydia Languish in her old age had wandered into the House of Lords during the argument in the above case, and had jotted down a few feeble notes on the back of her fan, she might, on attempting to reduce them to a readable form, have commenced as follows:—"This case (one of great social importance) divided the learned judges of the Court of Session in Scotland—seven of them having voted for the decision under appeal, and six against it—the minority, including the high name of the Lord President, whose mind had been for more than twenty years applied to the subject, and who was said to have framed the statute passed in 1845, which had generated the litigation." And the same lady, if pressed to try her hand at a headnote, might possibly have introduced into it, "Per the Lord Chancellor.—Did the trustees, by consenting to the marriage, and (as I think I may assume) by consenting to the settlement, deprive themselves of this power? My clear opinion is that they did not." Young reporters whose style is as yet unformed, and who are in search of a model, are referred to *Weller et al., Apps., Ker et al., Resps.*

Now, Sir, I submit this sort of twaddle is not what the profession have a right to expect at the hands of the council. Those gentlemen and their more ardent followers, at the outset of their undertaking, strenuously demanded of every practitioner two things—first, that he should become a subscriber to the forthcoming publication; and, secondly, that he should withdraw his support from, and in every possible way discountenance, all then existing sets of reports, whether "regular" or "irregular."

This requisition was based upon a promise that the new series should be the nearest possible approach to perfection; and that all others would consequently be found superfluous. How far this undertaking has been redeemed in the instances to which I have drawn attention the profession will judge; but in the meantime I would impress upon the council that they cannot afford to indulge frequently in flights of this kind. Success in commercial speculations, whether the subject-matter be the supply of a series of law reports or of a pound of sugar, is only attainable by the furnishing of an article answering contract.

F. O. B.

BOOKS RECEIVED.

A Treatise on the Law of Stoppage in Transitu, and incidentally of Retention and Delivery. By John Houston, Esq., of the Middle Temple, Barrister-at-Law. 8vo., pp. 269.—Maxwell.

Lord Lyndhurst. In Memoriam. 8vo., pp. 40.—Butterworths.

The Definition of Murder, considered in relation to the Report of the Capital Punishment Commissioners. By James Fitzjames Stephen, M.A., Barrister-at-Law, Recorder of Newark-upon-Trent. Reprinted from "Fraser's Magazine." 8vo., pp. 57.—Longmans.

Court Papers.

EQUITY CAUSE LISTS, EASTER TERM, 1866.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—A. Abated—Adj. Adjourned—A. T. After Term—Ap. Appeal—C. D. Cause Day—Cl. Claim—C. Costs—D. Demurrer—E. Exceptions—F. C. Further Consideration—F. D. Further Directions—M. Motion—M. D. Motion for Decree—P. C. Pro Confesso—Pl. Plea—Ptn. Petition—R. Rehearing—Sp. C. Special Case—S. O. Stand Over—SA. Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

M'Intosh v. Great Western Railway Co. (S., July 24)
L. C. Part heard
M'Intosh v. Great Western Railway Co. (S., Nov. 20)
L. C.
Williams v. Williams (K., July 27) L. J.
Soady v. Turnbull (S., Nov. 2)
Hooper v. Gumm (W., Nov. 10)
M'Lellan v. Gumm (W., Nov. 15)
Jenkins v. Parry (S., Nov. 21)
L. C.
Humphrey v. Roberts (S., Nov. 23) L. C.
Humphrey v. Roberts (S., Nov. 23) L. C.
Martin v. London, Chatham, and Dover Railway Co. (S., Dec. 4) L. C.
Splrett v. Willows (S., Dec. 8) L. C.
Payne v. Parker (W., Dec. 9) Part heard
Dabbs v. Nugent (S., Dec. 18) L. C.
Hayward v. Kersey (S., Jan. 12) L. C.
Att.-Gen. v. Master, Fellows, and Scholars of Sydney Sussex College, Cambridge (R., Jan. 17) L. C.
Same v. Same (R., Jan. 17) L. C.
Harries v. Rees (S., Jan. 18) L. C.
Hume v. Pocock (S., Feb. 8)
Schotsmans v. Lancashire and Yorkshire Railway Co. (R., Feb. 2)
Eaton v. France (S., Feb. 8)
Estate Co. (Limited) v. Home and Colonial Assurance Co. (Limited) (R., Feb. 9)
De Highton v. Money (Witnesses) (R., Feb. 10)
Pearse v. Dobinson (K., Feb. 10)

Morris v. Llanelly Railway & Dock Co. (S., Feb. 13)
Smith v. Davis } (R., Feb. 15)
Jones v. Davis }
Jones v. Davis }
Crenver and Wheal Abraham United Mining Co. (Limited) v. Wilyams (R., Feb. 15)
Dowling v. Dowling (S., Feb. 22)
Baxter v. Oliver (R., Feb. 26)
Thomas v. Daw (K., Feb. 26)
Ferguson v. Wilson (S., March 1)
Homfray v. Fothergill (S., March 2)
Drennan v. Andrew (K., March 3)
Roberts v. Roberts (S., March 7)
Duddell v. Simpson (S., March 15)
Knox v. Gye (W., March 16)
Company of Proprietors of the Sheffield Waterworks v. Yeomans (K., March 21)
Lilley v. Brunn (Vice-Chancellor of County Palatine of Lancaster) (March 21) April 24
Biney v. Stephenson (Ditto) (March 23)
Butt v. Imperial Gas-light & Coke Co. (K., March 24)
Minton v. Kirwood (S., March 26)
Western v. M'Dermot (R., March 28)
Buckland v. Papillon (R., April 5)
Thompson v. Marquis of Northampton (S., April 6)

CAUSES.

Baxendale v. West Midland Railway Co. (M D) L. C.
Baxendale v. Great Western Railway Co. (M D) L. C.
Crocker v. Kreeft } (F C)
Kreeft v. Crocker } L. C.

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

Holland v. Mortashed (D)
Partridge v. Foster (M D)
Llewellyn v. Rous (M D)
Powell v. Boggis (F C)
Gohegan v. Barlow (F C)
In re Pattle's Estate } (F C,
President, &c., of In- } from
fant Orphan Asy- } Cham-
lum v. Fletcher } bers)
Robinson v. Shepherd (F C)
Bastow v. Bastow (F C)
Hamilton v. Lethbridge } (F
Hamilton v. Hamilton } C)
Reed v. Fenn (M D)
Clark v. Eversfield (M D)
Howard v. Earl of Shrewsbury (Cause)
Thomas v. Cherley (M D)

Ibbott v. Burrell (M D)
Pomfrett v. Plucknett (M D,
Ptn)
Plucknett v. Pomfrett (M D,
Ptn)
Hancock v. Reeves (M D)
Windsor v. Campbell (M D)
Ellice v. North American Co-
lonial Association of Ireland
(M D)
Quinn v. Fowler Butler (M D)
Wright v. Blake (Cause, Wit-
nesses)
Powtress v. Rix (M D)
Lock v. London and Lanca-
shire Insurance Co. (M D)
Bilbee v. Grant (M D)
Merritt v. Howell (M D)
Kernochan v. Ryland (M D)
Arthur v. Clarkson (M D)
Ireland v. Soame (M D)
Gardiner v. Ennor (Cause)
Jarvis v. Allen (M D)
Higgins v. Higgins (M D)
Scholey v. Central Railway
Co. of Venezuela (Limited)
(M D)
Hulse v. Hardstaff (M D)
Chadwick v. Young (M D)
Lawrence v. Bell (M D)
Baroness Herbert v. Salisbury
and Yeovil Railway Co.
(M D)
Davies v. Whitehead (M D)
Turquand v. Miller (M D)
Jackson v. Twells (F C)
Seal v. Seal (M D)
Hawkes v. Clark (M D)
White v. White (Cause)
Redmayne v. Forster (Cause,
Witnesses)
Phillips v. Hudson (Cause)
Baron Kensington v. Metro-
politan Railway Co. (M D)
Williams v. Metropolitan Rail-
way Co. (M D)
Hodgson v. Hodgson (M D)
Seal v. Seal (M D)
Edmonds v. Read (M D)
Hendry v. Jones (Cause, Wit-
nesses) April 24
Barker v. Burdon (F C)
Denton v. Macneill (Cause)
Angell v. Calne Railway Co.
(M D)

Abingdon v. Green (Cause)
Beck v. Palmer (F C)
Belany v. Belany (Sp C)
Rope v. Rope (M D)
Thruston v. Gausson (M D)
Vaughan v. Governors of the
Bounty of Queen Anne (F
C)
Faulkner v. Anderton (F C)
Knight v. Mackenzie (M D)
In re Hepburn's } (F C,
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Lambert v. Buahill } Cham.)
Corser v. Jones (M D)
Edwards v. Main (F C)
Benyon v. Fitch (Cause)
Kidd v. Wilkinson (F C)
Mausel v. Turner (F C)
Hawksworth v. Dinnerdale
(M D)
Humby v. Moody (Cause)
Wild v. Banning (M D)
Talbot v. Kent (F C)
Hurt v. Hill (M D)
Deeds v. Smith (F C)
Colenso v. Gladstone (Cause)
Craven v. Craddock (Rehear-
ing, Summons)
Miniken v. Mackinlay (M D)
Barker v. Barker (M D)
Thompson v. Plimsoll (M D)
Forster v. Bell (M D)
Maudslay v. Tyrie (F C)
Bragg v. Bell (M D)
Tempest v. Lord Camoys (M
D)
Disney v. Crosse (F C)
Harrison v. Hillam (M D)
Cooke v. Brewster (Cause)
Selby v. Att.-Gen. (M D)
Earl Poulett v. Somerset (F C)
Gibbons v. London & Black-
wall Railway Co. (M D)
Tidman v. Trego (F C)
Byrne v. Parker (F C)
Adams v. Adams (F C)
Simpson v. Schomberg (Trial
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Imperial Parliament.

HOUSE OF LORDS.—Thursday, April 12.

The Attorneys and Solicitors (Ireland) (1886) Bill was read a second time.

THE COUNTY COURTS BILL.

The Lord Chancellor, in moving the second reading of this bill, briefly explained its provisions. Its main object was, he said, to abolish the office of treasurer of the county courts, and to authorise the registrars to account directly to the Treasury for the fees they received. Other clauses also abolished the office of high bailiff, which was wholly superfluous, as its duties were always performed by deputy. The general effect of the measure would be to save the country 34,000*l.* a year.

Lord Chelmsford said, that no one could question the propriety of abolishing the office of treasurer, but it was not so clear that equal advantage would follow from doing away with the high bailiff, who was said to be a check upon the registrar.

The bill was then read a second time.

Tuesday, April 17.

THE COUNTY COURTS BILL.

On the motion of *The Lord Chancellor*, this bill was read a third time, and passed.

HOUSE OF COMMONS.—Monday, April 16.

The Write Registration (Scotland) Bill was read a second time, and was ordered to be referred to a select committee.

The Railways Clauses Bill and the Public Libraries Act Amendment Bill were committed pro forma.

The Postmaster-General Bill was passed through committee.

On the motion of *The Attorney-General*, leave was given to introduce a bill to abolish forfeiture for treason and felony, and also a bill to consolidate and amend the law relating to bankruptcy in England. The second reading to be moved on Monday week.

Tuesday, April 17.

THE NEW COURTS OF JUSTICE.

In answer to Mr. Horsfall,

The Attorney-General stated that no express provision for an increase in the number of judges was deemed to be necessary. The arrangements had been based upon existing requirements.

RAILWAY DEBENTURES REGISTRATION.

Mr. *Scourfield* moved for leave to bring in a bill for the registration of railway debentures. He said the bill was substantially the same as that introduced last session. But as he understood that the Government intended to bring in a bill to the same effect, he would only move for leave to bring in the bill, and that it should be printed.

The motion was agreed to.

Wednesday, April 18.

PUBLIC COMPANIES BILL.

Mr. *D. Griffith* moved the second reading of this bill, the object of which was to enable shareholders in public companies to vote at meetings of their companies by means of voting papers. The bill did not interfere in any way with the existing methods of voting. Persons might still either vote by proxy or in person; it simply provided that, in case shareholders desired to act upon information conveyed to them through the press, or through any other channel, they might have the opportunity of recording their conclusions without a personal attendance on the occasion in question, or without the necessity of placing their votes at the disposal of a director. The hon. member stated that he was both a railway director and a railway shareholder to a considerable extent himself; and he was, therefore, in a position to determine the great value to railway interests of such a concession to shareholders. As a railway director, he at once admitted that he desired to be more under the control of the shareholders than the existing law permitted him to be. Railway directors, like members of that House, were but too likely to be carried off their legs, and to be coerced to vote upon questions from a party view. It frequently happened that they were obliged to sit by, although regarding the course pursued by their brother directors with the greatest mistrust through having no alternative before them but to resign their seats. However, the proposal embodied in the bill would make directors much more independent, and would save them from the risk of their proxies being abused.

Mr. *M. Gibson* said, as the principle of the bill was a salutary one, and as the hon. member did not propose to interfere with any of the existing methods of voting, he should not object to the second reading.

The bill was accordingly read a second time.

PROSECUTORS' EXPENSES BILL.

On the order of the day for going into committee on this bill,

Mr. *Bruce* said, he thought that some of its provisions would require modification.

The House then went into committee, when the several clauses of the bill were agreed to, with some slight amendments.

ART BILL.

This bill passed through committee.

BILLS IN PROGRESS.

PUBLIC COMPANIES.

Bill to alter and improve the Law relating to Voting in Public Companies.

[Messrs. Darby Griffith and Robert Torrens.]

Sect. 1. It shall be lawful for any shareholder in any such company, in lieu of voting in person or by proxy, to nominate any other duly qualified shareholder of the company to deliver for him at any meeting of the company, or at the poll, a voting paper, according to the form or to the effect prescribed in the schedule to this act annexed, containing the vote or votes to which he may be entitled. Such nominated shareholder shall be duly authorised and required to deliver such voting paper at the meeting or at the poll, and such voting paper so delivered shall be received by the proper officers of the company, as containing and tendering the vote or votes given by the shareholder so voting.

2. Any person falsely or fraudulently signing any voting paper in the name of any other person, and every person tendering, transmitting, or delivering as genuine any false or falsified voting paper, knowing the same to be false or falsified, and any person with fraudulent intent altering, defacing, destroying, withholding, or abstracting any voting paper, and any person wilfully making a false answer to any question put to him by the returning or other officer, shall be guilty of a misdemeanour, or in Scotland of an offence punishable by fine and imprisonment, and shall be punishable by fine or imprisonment for a term not exceeding three months.

3. This act and the 8 & 9 Vict. c. 16, to be construed together.

INNS OF COURT.

Bill to enable the Benchers of the Inns of Court to appoint Judicial Committees in certain Cases, and to give the necessary Powers to such Committees.

[Sir George Bowyer and the Hon. Mr. Denman.]

Sect. 1. That whenever any charge or complaint connected with or affecting the practice, the duties, or the honour of the legal profession shall be made against any barrister or other member of their inn to the benchers of any inn of court in England of which he is a member, and also whenever the benchers of any of the four inns of court shall deem it necessary or expedient, with a view to the exercise of their powers and functions, to inquire into the conduct of any barrister or other member of their inn, in every such case it shall be lawful for such benchers, if they shall think fit, to elect from their own body a judicial committee, consisting of not less than five nor more than eleven benchers, to hear and determine such charge or complaint or such matter of inquiry.

Any such judicial committee may proceed in the case with a quorum of not less than five members: provided that no decision shall be made unless a majority of members present throughout the hearing concur therein, such majority not being less than three.

2. It shall be lawful for any such judicial committees elected as aforesaid and they are hereby required in every such case to hear and determine every such charge or complaint, or such matter of inquiry; and such judicial committee shall have the power to disbar any barrister, and to expel from the inn any barrister or other member of the inn whom such committee shall find deserving such punishment, and to suspend any such barrister or other member of the inn from practice for any time that they shall think proper, and to pass any other sentence which it would have been competent to the benchers of the inn to have passed.

3. No barrister shall be disbarred or suspended from prac-

ties, and no barrister or other member of any inn shall be expelled from such inn, except by decision of a judicial committee elected under the provisions of this act.

4. An appeal shall lie from such judicial committee to the judges of the superior courts of common law, that is to say, the Courts of Queen's Bench, Common Pleas, and Exchequer, in the same cases in which there would have been such appeal if the decision of the judicial committee had been a decision of the benchers of the inn, such appeal to be heard and determined upon the evidence taken before the judicial committee.

5. It shall be lawful for the benchers of each of the inns of court, if they shall think fit, from time to time to frame, alter, and amend rules and regulations concerning the election or appointment of a member of each of its judicial committees to be president or chairman thereof, and concerning his functions and powers, and concerning the proceedings and powers of such committees (including their powers and discretion in the admission or rejection of evidence), and concerning the proceedings of the parties and others appearing before such committees, and concerning the forms of any orders, writs, and other proceedings which the benchers may think fit to be used, and for regulating the time within which appeals may be brought; all which rules and regulations are to be subject to the approval and allowance of the judges of the said superior courts of common law, or any five of them.

6. Such judicial committees as aforesaid, and the judges hearing any appeal therefrom, shall sit in open court, if the person against whom the charge or complaint is made, or whose conduct is the subject of inquiry, shall require the same, but they may deliberate in private, and the judgments of such judicial committees and of the judges on appeal respectively shall be in writing.

7. The said judicial committees shall have all the powers of compelling the attendance of parties and witnesses, and the production of papers and documents, and of punishing for contempt, and all other the powers which by law belong to the High Court of Chancery or Court of Queen's Bench, and also the power of administering an oath or affirmation, as the case may be, to any witness or party appearing before them; and any person guilty of contempt of the said judicial committee shall, upon certificate thereof signed by the president or chairman, be punishable by the Court of Queen's Bench in the same manner and by the same process, and be otherwise dealt with, as if he had been guilty of contempt of that court.

8. For the better exercise of the powers hereby given, it shall be lawful for the treasurer of each of the said inns of court, or for any person elected or appointed to be president or chairman of any such committee as aforesaid, to authorise or appoint any person or persons to administer an oath or affirmation for the purposes of this act, and also to authorise and appoint any person or persons to receive and take affidavits or depositions for the purposes of this act, and also to require the attendance of any witnesses, and the production of any papers or documents, by writ to be issued by him in such and the same form (as nearly as may be) as a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by her Majesty's Court of Queen's Bench; and any person disobeying any such writ so to be issued shall be considered as in contempt of the judicial committee for the purposes of which the same shall have been issued, and shall be subject to such and the same pains and penalties as if such writ had issued out of the said Court of Queen's Bench, and may be proceeded against accordingly in the said court as for a contempt of that court.

9. Any person examined before any such judicial committee who shall wilfully give false evidence shall be guilty of perjury.

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NOTICE.

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THE JURIST.

LONDON, APRIL 28, 1866.

THE AUTHORITY OF COUNSEL IN THE CONDUCT OF A CAUSE.

A CASE has occurred this week which will remove any misapprehension as to the effect of the *Swinfen* case, in regard to the authority of counsel in the conduct of a cause. It has been supposed by many that there was something in that case which interfered with or destroyed that authority; yet the Court which pronounced the decision had carefully drawn the distinction between the authority of counsel to conduct the *cause*, and their authority to enter into collateral agreements to bind their clients as to the subject-matter of the suit. In that case there was a suit in equity to recover an estate, and the Court directed an issue to be tried. At the trial, the counsel on each side entered into an arrangement, by which the estate was to be given up for a money compensation or consideration. The Court of Common Pleas held that it was within the authority of counsel; though, as there was no *actual* assent or adoption by the client, they declined to enforce it against her by attachment, especially as it was not in an action, but an issue out of Chancery. The court of equity, for a similar kind of reason, did not think it a contract of which *specific performance* should be enforced. Every one knows that the principles on which courts of equity grant specific performance are purely equitable, and embrace far more than the legal validity or trading character of the contract. Neither the court of law nor of equity, therefore, had to decide, or did decide, whether or not the agreement was within the authority of counsel to enter into; but whether there was such a contract as should be *specifically enforced* against the client.

The Court of Common Pleas, indeed, held that it was within the authority of counsel, and would have enforced it, probably, had it been in an *action*. At all events, it is manifest that this case had nothing to do with the ordinary authority of counsel, merely in the conduct of the *cause* at the trial; whether as to its course or its termination, by nonsuit, verdict, or withdrawal of a juror, or otherwise. Nor had it, indeed, anything at all to do with the legal authority of counsel to settle or compromise an *action*, or to refer it to arbitration.

It is extraordinary, therefore, that there should have been an impression among the bar that the decision had somewhat crippled the authority of counsel in the conduct of a suit. In the action by Mrs. Swinfen against Lord Chelmsford, on the contrary, the Court of Exchequer, in holding that the action did not lie, laid it down broadly and distinctly, that the counsel *had* authority, as to the conduct of a cause in court, including an authority to terminate it by a nonsuit, or withdrawal of a juror, or consent to a verdict, or reference to arbitration, &c. Such arrangements are daily made, and it would render it impossible to carry

on judicial business if they could *not* be made. The authority to consent to a nonsuit, which is beyond a doubt, is when it is considered, conclusive and decisive on this point. And so of the authority to consent to a reference to arbitration. It has always been considered that counsel have the conduct of the *cause* in court; and that if the client was absent, they have authority to act in it to the best of their judgment. It would be monstrous and disastrous if it were otherwise. Litigation, always more or less an evil, would be rendered intolerable if counsel, when in court, and in seeing their way to a safe and beneficial settlement, obviously for the benefit of their client, should not have power to consent to it. The question, of course only arises when the client is *absent*; and it is his own fault if he is so. If he is *present* he can, if his counsel declines to take the course he desires, withdraw his authority; or, on the other hand, the counsel can throw up the brief, if asked to take a course he considers wrong. But in the client's absence, counsel can only act to the best of his judgment, for that which he deems the benefit of his client. Putting it only as law or agency, this would be the law, according to all authority. But counsel are not mere *mandatories*; and it would lower the profession to deem them to be so. They are in the exercise of a high and honourable duty, the essence of which is to give their clients the benefit of their judgment, and to spare needless or pernicious litigation.

All this has been happily illustrated and confirmed in a case which occurred this week in the Queen's Bench. It was the case of *Strauss v. Frances*. The circumstances were these:—It was an action against the *Athenæum* for an alleged libel on the plaintiff, contained in a critique on a novel written by him, describing it as the worst that ever was written, &c. At the trial, before Lord Chief Justice Erle at the last Surrey Assizes, the counsel for the *Athenæum* read various passages from the book to shew that the critique was perfectly fair. In the course of these readings the counsel for the plaintiff (Mr. Serjeant Ballantine) rose, and asked leave to confer with the counsel on the other side, and the result was, that, by consent of counsel, a juror was withdrawn. The present was an application on the part of the plaintiff to set aside this proceeding on the ground of want of authority. It appeared from the affidavit of the plaintiff that he was present in court at the trial, but was "called out of court," he said, when the arrangement was in progress, and when he returned found it had been entered into, and the Lord Chief Justice was expressing his opinion about it, which (as was reported at the time) was to the effect that the plaintiff's counsel had taken a very proper course, and for the interest of the plaintiff himself. He stated, however, that he had given "no instructions except to carry the cause to a verdict." And the managing clerk of his attorney, who was present at the trial, swore that he requested his counsel not to assent to the arrangement, and told him the plaintiff would not approve it. At that moment the plaintiff, as he stated, was out of court, though, as one of the learned judges observed, he did not very clearly explain how it hap-

pened he was absent. However, so stood the case upon the affidavits of the plaintiff and his attorney.

We now quote from the report in the *Times*:—

"Kenealy appeared for the plaintiff, in support of his application for a new trial. He relied a good deal on the *Swinfen* case; but

Blackburn, J., said that was a very different case. It did not relate merely to the *cause*.

Mellor, J.—It was an agreement for the relinquishment of an estate.

Shee, J.—And in that very case the Court of Exchequer distinctly declared, that counsel had authority to conduct the case, to withdraw a juror, or the like.

Mellor, J.—Otherwise there would really be no knowing how to conduct a case; if no step in it could be taken without the express consent of the client, counsel could not venture to exercise a discretion as to calling a witness or putting a question, matters which often in effect decided a case.

Blackburn, J.—It is well known that the late Lord Abinger, when Sir James Scarlett, won his verdicts in a great degree by his wonderful discretion and skill in calling or not calling witnesses for the defence. Is such a man to consult his client at every stage in the cause what he is to do? The client commits the conduct of the cause to his counsel, and if he is absent, it must be his counsel who have the conduct of it. It is on that principle that counsel consent to a nonsuit in the absence of the client.

Mellor, J.—According to the opposite view, however desperate the case, counsel must carry it on to a verdict, although it may be manifest that it can be no good, but rather an injury, to his client, resulting in a verdict against him.

Blackburn, J.—If counsel can consent to a nonsuit, surely he can do the lesser thing, and consent to withdraw a juror, which is often a prudent and proper ending of a cause?

Mellor, J.—According to the view now set up by the plaintiff, counsel are bound to do nothing without the express directions of the client, and to obey his directions in the most servile manner. I trust that there are few at the bar who would accept briefs on those terms. The result would often be, to make the counsel the mere servile tool of the stupidity or malignity of his client. I think, on the contrary, that the client communicates to the counsel an authority over the conduct of the cause which, at all events, he must distinctly withdraw."

In that case, it is to be observed, that the Court were of opinion that it had not been distinctly withdrawn, even supposing the attorney has authority to withdraw it, which we should doubt, à fortiori, an attorney's clerk. However, after some discussion,

"Blackburn, J., said the Court did not think it would be right to set aside the arrangement. There had been no actual withdrawal of the brief or of the authority which it conveyed, and that authority comprised the conduct of the cause in court. It had been argued as though the counsel were the mere mouth-piece of the client, and employed merely to give the client the benefit of his eloquence and skill. But few counsel would accept briefs on such unworthy terms.

And the Court held, on the contrary, that one of the most important duties of counsel was to give the client the benefit of his judgment and discretion. But, at all events, counsel had, by well-known usage, an apparent authority in the conduct of the cause, so far as regarded the other side, whether or not it was restricted as between counsel and client. And an arrangement of this kind entered into with the other side within the scope of the ordinary authority of counsel, could not be disturbed merely on the ground of want of authority as between counsel and client.

Mellor, J., concurred.—No counsel, he hoped—certainly no counsel of character—would condescend to hire out his skill and eloquence in a cause in which he was to exercise no judgment of his own as to its conduct or its management. It was quite different when counsel entered into any agreement altogether out of the scope of the cause. The position of the other party to such an arrangement must be considered. The defendant in this case, on the faith of the agreement, sent away his witnesses, and gave up his chance of a verdict, which he might, perhaps, have obtained. Under such circumstances it would be most unfair and improper to disturb the arrangement.

Shee, J., also concurred.—There were many cases in which it was obviously for the interest of the client that the trial should end in this way; but if this application were to succeed, this could never be done unless the client were present and personally consented to it; or, at all events, it would be done at great risk if the client were a wrong-headed or unreasonable man. The learned judge read at some length from the judgment of the Lord Chief Baron in the *Swinfen* case, to the effect that counsel had full authority, in the absence of their clients, to enter into arrangements for the amicable termination of a cause, though not to enter into agreements quite collateral to it. There might be cases, no doubt, in which it would not be right thus to settle a case, and if the counsel differed from his client on that point he would throw up his brief, but if his client were absent he could only act to the best of his judgment.

Application refused."

We think that the opinion of the profession will fully ratify this decision, and that it will have a very beneficial operation in fully settling and establishing the authority of counsel to enter into arrangements for the termination of a cause, obviously for the mutual benefit of their clients, and thus to put a stop to useless and vexatious litigation.

Rebisteu.

The Definition of Murder, considered in relation to the Report of the Capital Punishment Commissioners. By JAMES FITZJAMES STEPHEN, M. A., Barrister-at-Law, Recorder of Newark-upon-Trent. (Reprinted from Fraser's Magazine. 8vo., pp. 57).

[Longmans.]

MR. STEPHEN has done good service in pointing out, in a forcible and convincing manner, the objections to the alterations in the law as to the definition and proof of the crime of murder which have been recommended by the Capital Punishment Commissioners.

The commissioners, in their report, after pointing out the objections to the present definition of murder, that it extends to the unintentional slaying of a man, if it was the consequence of a felonious act (as where a thief, intending to shoot and steal a domestic fowl, hits and kills a man), and also suggesting that the present distinctions as to provocation are unsatisfactory—point out two alternative modes of amending the law.

"The first plan is to abrogate altogether the existing law of murder, and to substitute a new definition of that crime, confining it to felonious homicides of great enormity, and leaving all those which are of a less heinous description in the category of manslaughter.

"The other plan is one which has been extensively acted upon in the United States of America, where the common law of England is in force. This leaves the definition of murder and the distinction between that crime and manslaughter untouched, but divides the crime of murder into two classes or degrees, solely with the view of confining the punishment of death to the first or higher degree.

"We have given both these plans our serious consideration, and we are of opinion that the required change may be best effected by the latter, which involves no disturbance of the present distinction between murder and manslaughter, which does not make it necessary to remodel the statutes relating to attempt to murder, and does not interfere with the operation of those treaties with foreign powers which provide for the extradition of fugitives accused of that crime. The object proposed can be attained by a short and simple enactment, providing that no murder shall be punished with death except such as are particularly therein mentioned. These should be called murders of the first degree; all other murders should be called murders of the second degree, and punished as hereinafter recommended.

"We recommend, therefore—

"1. That the punishment of death be retained for all murders deliberately committed with express malice aforethought, such malice to be found as a fact by the jury.

"2. That the punishment of death be also retained for all murders committed in, or with the view, to the perpetration, or escape after the perpetration, or attempt at perpetration, of the following felonies: murder, arson, rape, burglary, robbery, or piracy.

"3. That in all other cases of murder the punishments be penal servitude for life, or for any period not less than seven years, at the discretion of the court."

Some of the objections urged by Mr. Stephen to these recommendations are founded on a misunderstanding of the expression "malice," to which we will presently refer; but in the following observations we entirely concur:—

"It may, indeed, be that the essence of the commissioners' recommendation lies not in the words 'express malice,' but in the words 'to be found as a fact by the jury;' and it might, perhaps, be held, by a sort of analogy to the law of libel, that the effect of the proposed enactment would be to remit it to the jury, in every particular case, to say whether or no the circumstances of that case exhibited what they would call express malice aforethought. It appears probable that this was their meaning, as otherwise they leave the question of the provocation just as it is. If this is the intention, the effect would be very similar to that of the French system of extenuating circumstances, which is one of the worst and weakest parts of their law. If such a power were given to the jury, they would become, not judges of the fact, but depositaries of the Crown's prerogative of mercy, and this they would

have to exercise under the pressure of vehement and eloquent appeals to their passions. In a case, for instance, like Townley's, the trial would no longer be an inquiry into facts. It would consist principally of vehement appeals to the sympathies of twelve small shopkeepers or farmers chosen by chance, and called upon to decide, not on the question of fact as at present, but on the propriety of hanging A. B.; and this decision would have to be given on the bare evidence admissible for the purpose of examining the facts, and under the excitement of the moment. The present mode of exercising the prerogative of mercy is most unsatisfactory in every possible way, but it is at least calm, dignified, and deliberate. In determining on the fate of a man convicted of murder, the Home Secretary takes his own time. He inquires into such collateral facts as may appear to him to be relevant to the question whether it is desirable to hang a particular person, and which could not have been admitted in evidence on his trial. He is known to the public, and is responsible in various ways for the advice which he gives. He is also a Cabinet Minister, and may thus be presumed to have some acquaintance at least with the principles on which punishment ought to be administered. None of these things are true of a jury. They cannot travel out of the evidence before them; they must decide on the spot; they have no special acquaintance with the administration of criminal justice; and their number is just large enough to shield them from any sort of responsibility. The system of extenuating circumstances incorporates for the time being popular sentimentality, whether in the fierce or in the tender mood, as the case may be. It is, in short, a device intended solely to shirk a difficulty which the Legislature ought to face and solve, by throwing the solution of it on a body which is particularly unfit to bear it."

On the second recommendation Mr. Stephen remarks:—"This an adaptation of the old rule, that malice is implied when the death is caused in the commission of a felony. The commissioners felt, and felt justly, that this was far too severe. The cases which have been mentioned above, of the man shooting at a tame fowl with intent to steal, and the like, are instances of this excessive severity. Their recommendation appears to me to be quite as arbitrary as the old law, and to be likely to work great injustice both in what it includes and in what it excludes. In the first place, the list of crimes to which the rule applies appears to be far too small. Murder committed in, or with a view to, the perpetration of high treason, is surely as bad a crime as murder committed in, or with a view to, robbery. A Fenian deliberately shoots or poisons the sentries at Dublin Castle in order to prepare the way for an attack on it. According to the commissioners, this is murder in the second degree only.

"Let us pursue these illustrations a little further. It would be murder in the first degree to kill a man by a slight blow or push given for the purpose of taking his watch by force, or for the purpose of preventing him from apprehending the robber as he ran away. It would be murder in the second degree to kill a child by setting a ferocious dog at it for sport; or to kill a woman by the most brutal kicks in the stomach and blows on the head, given not with the intention of killing, but with the intention of doing grievous bodily harm, and with utter indifference whether death was inflicted or not. By way of compensation for this leniency, if a pirate were to fire a gun to bring a vessel to in order to rob her, and if the gun were to burst and kill one of his companions, this would be murder in the first degree."

Our readers will find in the essay of Mr. Stephen many more and weighty reasons for objecting to the change proposed by the commissioners.

On the other hand, we are unable to agree with Mr. Stephen in his proposal to frame a new definition of murder. After giving a sketch of the history of the law of murder, which he seems to think is alone sufficient to condemn it, though it would be difficult to find any important head of common law which has not gone through changes as numerous and important, Mr. Stephen admits that "it may be said with some confidence that the subject is at length exhausted, and that rules free from all fiction have at length been established, by which the meaning of the unlucky word 'malice' has been reduced to a certainty. Indeed, so fully has the subject been discussed, and so very complete is the collection of illustrations, that for the last twenty years and more no single case has been decided which materially varies the law upon the subject. The authorised reports from 1844 to the present time are those of Dennison, Dearsley, Dearsley & Bell, Bell & Leigh, and Cave. None of these contain any case which affects the definition of murder. As hundreds of trials for that crime have taken place during the period in question, it is obvious that the law may be considered to have taken its final shape."

The law, then, has defined the crime of murder with certainty. It is admitted, however, that in point of policy the definition is unsatisfactory. It includes offences which ought not to be regarded or punished as murder. The obvious remedy is to pass an act declaring that such offences shall henceforth be deemed to amount to manslaughter, and not to murder. Upon the enactment, however well it may be drawn, doubts will arise, and after the lapse of some years the law will be settled by decisions, with the least possible amount of that inconvenience which every change of the law necessarily involves. But to unsettle the whole law of murder for the sake of making a small alteration, which, after all, is more important theoretically than practically, inasmuch as the harshness of the law is always mitigated in practice, would be as wise as to pull down a large house, and build another on a new plan, in order to abolish a single small chamber. Yet Mr. Stephen is so heedless of the first principles of jurisprudence as to write thus:—

"As to the importance of having a definition, there can, one would think, be no doubt of it. . . . Indeed, if nothing else were required than to codify the existing law, it would be easy to throw the cases already decided into the shape of a series of propositions which would express all that they decide." And what would be gained? Mr. Stephen answers, "That such a step would be an immense convenience in the administration of justice and in popularising the knowledge of the law, is a self-evident proposition. How any one can doubt it who does not also doubt whether the Latin syntax ought not to consist entirely of an indefinite number of examples to the total exclusion of all rules, is to me incomprehensible." There has not been a single question on the definition of murder during the last twenty years. A new statutory definition would inevitably give rise to many questions—the statute itself would never be read by a single layman—and yet we are to admit as self-evident the proposition that such a statute would be an immense convenience in the administration of justice and in popularising the law.

If the community needs enlightenment on the law of murder, let Mr. Stephen write an essay on it for them; no one could do it better. If they want to know the rules of the Latin syntax, let the rules be compiled and written out for them; but do not let us

cast aside the natural growth either of the common law or of the Latin language, in order to substitute an artificial code, which can never work until it has ceased to be a code, or an artificial language, which could never be galvanised into vitality.

Equally unphilosophical and mistaken is the criticism made by Mr. Stephen on the growth of the definition of murder. In the first place he commits the capital mistake of imputing the pedantries of text-writers, such as Britton and Coke, to the common law, and then he makes it an objection to the law in its present condition—that it has been evolved in the course of ages by almost imperceptible changes, from a very different state of things. It would be very unsuited to the present state of things if it had not so changed. But nearly the whole of Mr. Stephen's comment on the definition of murder is based upon a misapprehension of the meaning of the word "malice." He forgets that in all sciences and arts words which are taken from the language of common life, and are appropriated as terms of art, are from that time removed from the changes and developments to which the common language continues subject, and become as it were fossils. "Malice" in common language has now acquired a meaning very different from that which it had in the fourteenth century, when it seems to have become part of the definition of murder; and yet Mr. Stephen continually finds fault with the law for imputing "malice" to a man who kills another without a grudge. The simple answer is, that malice did not mean grudge or ill-will, but meant simply a bad or evil intention. Thus, Wiclif translates *kakia*, in the Sermon on the Mount, "malice." "For it suffiaith to the day his own malice." (Matth. 6, 34). So, Gower,—

"For as the water of the well
Of fire abateth the malice,
Right so veru fordoeth the vice."

Conf. Am. G. 2.

"Malice," then, according to its original meaning, is an essential part of the definition of murder. It is certainly not worth while to unsettle the law for the sake of substituting a modern word.

CAUSES ENTERED AFTER THE FOURTH DAY OF EASTER TERM.

COURT OF QUEEN'S BENCH.

NEW TRIALS.

Lond.—Hyams v. Webster	Liverpool—Shaw v. Lancashire and Yorkshire Railway Co.
—Ingram v. Fleming	—Seymour v. Robertson
—Rein v. Lane & ors.	Nottingh.—Parsons v. Hind
—Dignam v. Cator	York—Sayer v. North-eastern Railway Co.
Leicester—Brick v. Howard	—Webster v. Same
Pembroke—Lloyd v. Jackson	—Thompson v. Same
—Reg. v. Stephens	—Moore & an. v. Berry
Glamorgan—Reg. v. Dickson	Leeds—Harris v. Wooler
Cumberland—Hardy v. Featherstonhaugh	—Knowles v. Nunns
—Same v. Same	Kent—Knatchbull v. Wickes
Northumberland—Hughes & an. v. Straker & ors.	Sussex—Branson v. Gough
Durham—Redhead v. Midland Railway Co.	Surrey—Stuart v. Baumont
—Fairley & an. v. Sweet	Devon—Williams v. British Empire Mutual Life Assurance Co.
—Robson v. South Shields Theatre Co. & an.	Stafford—Russell v. Nock
Liverpool—Wilson & an. v. Bank of Victoria	Gloucester—Ricketts v. Cummings & ors.
—Forshaw v. Pennington	—Rickaby v. Rumboll
—Hubbert v. Lancashire and Yorkshire Railway Co.	<i>Tried during Term.</i>
—Wilson v. Peat	Midd.—Cannon v. Calvert.

COURT OF COMMON PLEAS.

NEW TRIALS.

Campaign v. Luck	Coulthurst & an. v. Sweet
Macral v. Clarke	Hillier v. Alexander & an.
Crux & an. v. Aldred	Thorp v. Facey & an.
Bateman v. Mid Wales Rail- way Co.	Newton v. Gale (In Eject- ment)
National Discount Co. v. Mid Wales Railway Co.	Walker v. Manchester and Sheffield Railway Co.
Felton v. Keen	Rigg v. Manchester and Shef- field Railway Co.
Wildas v. Russell	Mullett v. Mason
Grill v. General Iron Screw, &c. Co.	Beckett v. Midland Railway Co.
Carr & an. v. Wallachian, &c. Co. (Limited)	Kelly v. Morray
Meldrum v. Chapman	Duke of Beaufort v. Crawshaw
Overend, Gurney, & Co. v. Mid Wales Railway Co.	Harrison & ors. v. Henderson
Foxley v. Bannister	Manchester Warehouse Co. v. Beattie
Markwell v. Knight	Negroponte v. Crossley
Gray v. Raper & ors.	M'Kean & an. v. Kay
Greenberg v. Ward	Wirral Water-works Co. v. Lloyd Clarke
Harvey v. Hindmarsh	Ward v. Wescomb.
Smith v. Thackerah	

COURT OF EXCHEQUER.

NEW TRIALS.

Restall v. London and South- western Railway Co.	Wright v. Child
General Steam Navigation Co. v. British Colonial Steam Ship Co.	Barnes v. Lloyd & an.
Wheeler v. London, Brighton, and South Coast Railway Co.	Ward & ors. v. Moss
Bennett v. Harvey	Ambler v. Briscoe
Kirkman v. Mare & an.	Ryalls v. Leader & ors.
Smith v. Cooke	Walker v. Midland Railway Co.
Simcock v. Lee	Nuttall v. Bracewell
Dantee v. Ashworth	Longwood v. Ash
Barkham v. Du Thou & ors.	Sutherland v. Allhusen & an.
Combes v. Dibble	Lancashire and Yorkshire Cotton Manufacturing Win- ning Co. (Limited) v. Wil- son & an.
Davis v. Davis	Ward v. Clason
Cauncross v. Owen	Griffiths v. London & North- western Railway Co.
Morrell v. Stevens	Baines & ors. v. Ewing
Hubbard v. Lees	Klingender v. Home and Co- lonial Assurance Co.
Williams v. Vale	

Imperial Parliament.

HOUSE OF LORDS.—Monday, April 23.

PRIVATE BILLS.

Lord *Redesdale* moved the following resolutions:—That no private bill brought from the House of Commons shall be read a second time after Friday, the 29th June next. That no bill confirming any provisional order of the Board of Health, or authorising any inclosure of lands under special report of the Inclosure Commissioners for England and Wales, or for confirming any scheme of the Charity Commissioners for England and Wales, shall be read a second time after Friday, the 29th June next. That no bill confirming any provisional order made by the Board of Trade under the General Pier and Harbour Act, 1861, shall be a second time after Friday, the 29th June next. That when a bill shall have passed this House with amendments, these orders shall not apply to any new bill sent up from the House of Commons which the chairman of committees shall report to the House is substantially the same as the bill amended.

The Attorneys and Solicitors (Ireland) 1866 Bill passed through committee.

HOUSE OF COMMONS.—Thursday, April 19.

The Crown Lands Bill was read a second time.
The Local Government Supplemental Bill was read a second time.

The Poor Persons (Ireland) Bill was read a third time, and passed.

The Cattle Assurance Bill (Amended) passed through committee.

The Customs Duties (Isle of Man) Bill passed through committee.

The Landed Property Improvement (Ireland) Advances Bill passed through committee.

The Railway Debentures Registry Bill was read a second time.

BILLS IN PROGRESS.

RAILWAYS CLAUSES.

A Bill for consolidating in One Act Provisions applicable to Metropolitan and other Railways.

[Messrs. Milner Gibson and Monsell.]

- Sect. 1. Short title.
 2. Division of act into parts.
 3. Application of act.
 4. Interpretation.
 5. Recovery and application of penalties.
 6. Form and delivery of notices, consents, &c.
 7. Deposit of plans, &c. with vestry clerk, &c.
 8. In Westminster, high bailiff substituted for sheriff.
 9. Disputed compensation as to lands in city of London to be tried before mayor and aldermen at Guildhall.
 10. Compensation to tenants from year to year, &c. in metropolis to be tried under sect. 121 of Lands Clauses Act, 1845.
 11. Power to deviate from levels for avoiding sewers, &c.
 12. Protection of sewers, &c. of metropolitan and other boards.
 13. Bridges over streets in metropolitan district.
 14. Cuttings, &c. affecting streets in metropolis.
 15. Regulations where notice given to Metropolitan Board of Works, &c.
 16. Protection of streets in metropolis.
 17. Deposit of materials on streets, &c.
 18. Payment for stones and materials.
 19. Power for Metropolitan Board, &c. to light arches over streets.
 20. Hoardings or walls to be provided by company.
 21. Inclosure of arches.
 22. Superintendence of water and gas companies.
 23. Interruption of supply of water or gas.
 24. Power to water and gas company to enter and repair pipes, &c.
 25. Provision for larger mains.
 26. Repairs of pipes, &c. to be borne by company in certain cases.
 27. Protection of telegraphic apparatus, &c.
 28. Power to company to make opening in carriageway.
 29. Works connected with new streets.
 30. Power to deviate from levels, &c. of new streets.
 31. New streets to be under care of local authorities.
 32. Elevations of houses to be approved by Metropolitan Board of Works.
 33. Company to pay expenses of Metropolitan Board, &c.
 34. Differences between company and Metropolitan Board, &c.
- Superfluous Lands.*
35. Where the company hold any superfluous lands within the metropolis, they may at any time, and from time to time, grant leases, or otherwise dispose thereof, for building or other purposes, for such terms of years or other interests, at or for such rents or other considerations, and subject to such covenants, conditions, and stipulations, or on such other terms as they deem expedient with reference to the circumstances of each case.
 36. Whenever, by vesting in various owners or otherwise, the reversion on any such lease is severed, any rent reserved thereon may be apportioned by agreement between the owners; and if such apportionment is not so settled by agreement, the same shall be settled by an arbitrator appointed by the Board of Trade; and after any such apportionment, the owner of each part of the reversion shall, in respect of the apportioned rent allotted or belonging to him, have the

benefit of all conditions or powers of re-entry for non-payment of the original rent, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion, in respect of the apportioned rent allotted or belonging to him.

37. Local rates to be made good.
38. Company to run morning and evening cheap trains.
39. Regulations as to tickets.
40. Compensation for injury to such passengers.
41. Saving for rights of corporation of London and Commissioners of Sewers.
42. Saving for rights of Metropolitan Board of Works, &c.
43. Saving for Crown Estate Paving Commissioners.
44. Saving for Battersea Park Commissioners.
45. Saving for operation of general acts.
46. Notice by company as to houses occupied by labouring classes.
47. Provisions as to concurrent powers of purchase.
48. Penalty for non-completion of railway.
49. Short distance charge.
50. Fraction of mile; passengers.
51. Fraction of mile; animals and goods.
52. Fraction of ton.
53. Passengers' luggage.
54. Special trains.
55. Determination of weight.
56. Terminal charges.
57. Small packages.
58. Agreement for higher charges as to goods.
59. Company not bound to carry manure, &c.

Application of Money.

60. It shall not be lawful for the company, out of any money by any special act relating to the company authorised to be raised by calls in respect of shares or by the exercise of any power of borrowing, to pay interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him in the capital of the company; but this provision shall not prevent the company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is allowed by the Companies Clauses Consolidation Act, 1845, or the Companies Clauses Consolidation (Scotland) Act, 1845 (as the case may be).

61. Deposits for bills not to be paid out of company's capital.
62. Saving for rights of Crown.
63. Saving for rights of Duchy of Lancaster.
64. Saving for lands held by Board of Trade.
65. Saving for lands, &c. of Commissioners of Works, &c.
66. Consent of conservators for works affecting Thames.
67. Works to be according to approved plan.
68. Material from river.
69. Erection of public stairs.
70. Saving for rights of conservators of Thames.
71. Saving for operation of general acts.

LEGITIMACY DECLARATION, &c.

A Bill to explain the Act of the 20 & 21 Vict. c. 85, and the Legitimacy Declaration Act, 1858.

[Messrs. Chambers and E. Craufurd.]

Sect. 1. It is hereby declared, that on any petition for dissolution of marriage under the said act of the 20 & 21 Vict. c. 85, and on any petition under the Legitimacy Declaration Act, 1858, the parties, or any of them, are entitled as of right to demand, and on such demand the court shall direct the truth of all contested matters of fact shall be determined by the verdict of a jury.

THE JURIDICAL SOCIETY.—At a meeting, held on Wednesday evening, in the Society's Rooms, in St. Martin's-place, Mr. Charles Clark in the chair; Mr. W. Wellington Kerr read a paper, intitled "*On mistake as a ground for relief in equity.*" The chairman, Mr. Vaughan Hawkins, Mr. Droop, and Mr. Stebbing addressed the meeting. Votes of thanks to the reader and the chairman terminated the proceedings.

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THE JURIST.

LONDON, MAY 5, 1866.

IN the case of marine insurances, the question of liability often turns on the description of the voyage in the policy, and the words "at," and "from," and "to" frequently form the principal ingredient in determining the period of the risk insured against, where that is the point in dispute. Many decisions, or rather the results of decisions, very succinctly and clearly stated, on the meaning of those words, are to be found in Maude & Pollock's Laws of Shipping, c. 7, tit. "Insurance." Thus, for example—If the insurance on a ship is merely "from a port," the vessel is not protected unless she actually sails. If it is "at and from a port," she is protected during her continuance there. If the voyage be described as to a country generally, it terminates on the arrival of the ship at any port in that country. For this last proposition, the case is cited of *Camden v. Cowley* (2 W. Bl. 416), which we may do well to refer to at some length, by way of introduction to a recent interesting case in the Court of Exchequer, where, however, it seems to have been overlooked. In *Camden v. Cowley* the action was brought on a policy of insurance on a ship "at and from Jamaica to London." The ship was also insured from "London to Jamaica" generally, and was lost in coasting the island after she had touched for some days at one port there, but before she had delivered all her outward cargo at the other ports of the island. The report says—"In order to shew when the homeward-bound risk commenced, it was necessary to shew at what time the outward-bound risk determined, and to prove that, by the custom of merchants, the outward-bound risk determined not when the ship arrived and moored twenty-four hours in any port of the island (as the plaintiff in the present cause contended), but when she had been safe twenty-four hours in her last port of delivery." Evidence of the general opinion and understanding of persons concerned in the trade was admitted; and the jury returned a verdict for the plaintiff, which was upheld by the Court, though Lord Mansfield said that the inclination of his opinion had been the contrary way; and he said—"The policy was very inaccurately worded, in not defining what was meant by being at Jamaica; and I left it to the jury, which was a very capable one."

Now, the matter decided in that case was, that the words "at Jamaica" in the homeward policy, and the words "to Jamaica" in the outward policy, both applied to the first of several ports of that island the ship had to touch at; and the report expressly states that the question, when the homeward risk commenced, was taken to be identical with the question, when the outward risk determined; and to that point the evidence of usage was directed. Nothing arose there as to a disaster happening to the ship before she had come to safe anchorage in the first port. She had been safely moored there some days before she was lost in coasting the island. But if

it had arisen, for instance, if she had been lost when sailing into the harbour of the place to which she was bound, before she had found safe anchorage, it is a fair inference that the same test would have been applied; and if it had been held that the outward-bound risk had not determined at the time of the loss, it would also have been held that her homeward-bound risk had not then attached; and that though the ship might have been "at" Jamaica, in the popular and geographical sense of the word "at," it was not there within the meaning of that word in the homeward policy. In the note to *Parmeter v. Cousins* (2 Camp. 237)—a case where the homeward policy was held never to have attached, because the vessel only arrived at the port in a very disabled state, and after anchoring above twenty-four hours in great danger, was blown out to sea, and wrecked—the learned reporter, after saying that he could find nothing in the books on the subject, except a statement of Lord Hardwicke's in *Motterux v. The London Assurance Company* (1 Atk. 548), that, in a case tried before him, it was debated whether "at and from Bengal to England" meant the first arrival of the ship at Bengal, and that it was agreed that the words "first arrival" were implied, and always understood in policies, takes that to be the rule, and, as qualified by *Parmeter v. Cousins*, the established law on the subject; and then proceeds as follows:—"But perhaps it might have been better to have held that the policy in the homeward voyage commences at the time when that on the outward voyage expires. Suppose a ship to arrive safe at the outward port, and to be wrecked or captured before she has moored twenty-four hours in good safety, the insured, being *more than ordinarily protected* during this period, may make their election between the underwriters on the outward or on the homeward voyage; and some confusion, if not injustice, may arise in finally adjusting the loss."

The case before the Court of Exchequer turned on the meaning of the word "at" in a policy of insurance on a ship "at and from" an outward port; and that Court has held, that the terms of homeward policies are not to be construed with any reference to those of outward policies not named in them; and that the word "at," in an insurance "at and from" an outward port, must be taken in the popular sense in which it is ordinarily used; and that if a ship has, in a sea-worthy condition, entered the harbour of the place to which she is bound, she is, provided she be there in the popular and geographical sense of the word "at," "at" that place, within the meaning of the words "at and from" in the homeward policy, even before she has found safe anchorage, or anchored at all. The case is that of *Houghton v. The Empire Insurance Company* (4 H. & C. 44), and we take the following summary of the facts from the report, p. 46:—

"The ship was insured from Nassau to Havana, and went to the latter place with a cargo of coals. The captain proved that he arrived at Havana on the 5th May, 1864, and took a pilot as soon as he got inside the harbour; that he then took a steam-tug. His instructions to the pilot were, to take him to a clear anchorage. The tug took her up through the

harbour and the shipping, to a place called the 'Regla shoal;' and when past the thick of the shipping above the city, the ship began to stir the mud, but was not felt to take ground. The pilot then gave orders to let go the anchor, and the hawser, which connected the ship with the tug, having broken, the pilot went on shore, and the ship remained in that place. On the next morning the captain attempted to get her head to wind, but could not, and later in the day found that she had sustained damage from the anchor of another ship. She was afterwards got to her place of discharge, nearer the mouth of the harbour than where the shoal was, and at a place pointed out by the purchaser of the cargo. A chart of the harbour of Havana was also in evidence. It was agreed by the counsel that the only question was, whether the risk had attached at the time the damage occurred. A verdict was then entered for the plaintiff for 353/5s. 1d., with leave to the defendants to move to enter a verdict or nonsuit; the Court to be at liberty to draw inferences of fact." The rule nisi was obtained accordingly, on the ground that the policy never attached, the vessel not having arrived "at" Havana, within the meaning of the policy; but the Court held that it had.

In shewing cause against the rule, the plaintiff's counsel contended that the ship was geographically "at" Havana when the damage occurred; that the word "at" must be taken to be used in the policy in its popular and geographical sense. They also appealed to nautical language in support of their view, putting by way of example, that when a ship comes into Dover roads she is off Dover, but when she enters the piers of the harbour she is at Dover. This led Martin, B., to observe, "that the word 'at' may have two meanings; in common parlance, a vessel is 'at' Dover when she is so near that her passengers could go on shore." The counsel for the defendant, on the other hand, contended that the ship had not arrived at Havana within the meaning of the policy, and that the word "at" meant at the place where, if the ship had been moored in safety twenty-four hours, the underwriters on an outward policy would be discharged. That it was not necessary that the outward policy should have expired, if, when the ship arrives at her place of mooring, the outward and homeward policies overlap until the expiration of twenty-four hours, when the homeward policy becomes the only security. That, although a ship might be said, in the popular and geographical sense, to arrive "at" a place, yet the risk continues until she has reached her place of discharge, and been moored there twenty-four hours in safety; and that this ship never arrived at her place of discharge in safety.

The Court took time to consider, and judgments were ultimately delivered by Mr. Baron Channell and Mr. Baron Pigott (4 H. & C. 50-54). Mr. Baron Channell, in the course of his judgment, said, "The damage occurred 'at' Havana, geographically speaking, and there is nothing which, to my mind, shews that the parties, at the time this policy was underwritten, contemplated any other meaning of the word 'at.' All the limitation which the law appears ever to have

imposed, as to the time of the commencement of the risk in such case is, that the ship should arrive at the port 'at' which she is insured, in such a state of repair or seaworthiness as to be enabled to be there in safety." And after referring to the authorities cited in argument, and particularly to the statement made by Lord Hardwicke, the learned judge proceeded to say, "Unless, therefore, we can say that her first arrival at the port is when she casts anchor there, instead of when she entered the port, our judgment must be for the plaintiff. In many cases the nature of the port may be such that the two events may be identical. There may be nothing to shew the arrival till the vessel casts anchor, but here we have evidence as to the port of Havana, which is sufficient, in my judgment, to shew that the arrival was before casting anchor. It has been argued that the first arrival, which must be, no doubt, in good safety, must be identical with the mooring in good safety, usually named in outward policies. But I think we cannot construe the terms of one contract by reference to those of another not referred to in it; and it is clear, that there is no usage that the duration of the outward and homeward policies should not overlap, because the outward policy usually extends to twenty-four hours after the vessel is moored in good safety. During those twenty-four hours there is no question that there is a double insurance; and, therefore, I see no ground for saying, that the parties contracted subject to any usage that such a policy would not attach until the previous one had determined." And Baron Pigott, on the last part of the case, in his judgment, said, "A policy of insurance is to be construed by the same rules as other contracts, the duty of the Court being to collect the parties' meaning, by taking the language employed in a plain and ordinary sense, and not to speculate on some supposed meaning, which they had not expressed. For the defendant it was argued, that Havana, being an outward port as regards the ship, the meaning of the words 'at and from' such outward port, was, that the risk shall commence when the ship has so far performed her outward voyage, that nothing remains to determine the outward policy but the effluxion of the twenty-four hours from her arrival; and that so understood, this policy had not attached, inasmuch as the ship had not arrived at her place of discharge. But it seems to me that this would be a very artificial construction to adopt, and that we have no safe guide to conduct us to it. It might with equal plausibility be argued, that the risk 'at and from' a port should not commence till the insurance 'to' that port ceased, which is at the end of the twenty-four hours, and not at the commencement of them. The answer to both suggestions seems to be, that the construction of this contract cannot depend upon the contents of another and distinct one, which is wholly unconnected with it; nor is the Court called upon to know, or to assume, that there is, in fact, any outward policy in existence. This view is supported by the authority of Lord Hardwicke (1 Atk. 548). He mentions a case, tried before him at Guildhall, in which he says, 'It was doubted whether the words "at and from Bengal" meant the first

arrival of the ship at Bengal,' and he adds, 'It was agreed that the words "first arrival" were implied, and always understood in policies.' Now, there can be no question about the sense in which Lord Hardwicke uses the words 'first arrival,' viz. in contradistinction to her being moored in a particular place, or discharging her cargo."

The statement by Lord Hardwicke was cited by Lord Campbell, in the note to his report of *Parmeter v. Cousins*, as an isolated proposition, without reference to the circumstances under which it was made; and was used in the same way, in argument by counsel, in the Court of Exchequer. But an examination of the context in the case where the statement was made, deprives it of all force; for it is evident that Lord Hardwicke meant nothing more than that "at and from" includes continuance at the port as well as departure from it; and that he left quite untouched, and, we may say, quite unthought of, the question whether the ship's simply entering the harbour of the place to which she is bound is a "first arrival," within the meaning of the words "at and from" in the homeward policy; so that the underwriters are liable, if she is damaged or lost by perils of the sea, before even she anchors.

Imperial Parliament.

HOUSE OF LORDS.—*Thursday, April 20.*

SALES OF LAND BY AUCTION BILL.

This bill passed through committee (on recommitment).

Monday, April 30.

Lord *Chelmsford* brought in a bill to amend the law relating to Sunday trading.

The Attorneys and Solicitors (Ireland), 1866, Bill, and the Salmon Fisheries (Scotland) Bill passed through committee.

The report of the committee on the Sale of Land by Auction Bill was received and agreed to.

Tuesday, May 1.

LAW OF CAPITAL PUNISHMENT AMENDMENT BILL.

The Lord Chancellor, in moving the second reading of this bill, said it referred to a subject of the deepest importance. In 1864 a motion was made in the House of Commons by Mr. Ewart, for the appointment of a select committee to inquire into the subject of capital punishments. After considerable discussion the motion was withdrawn, on the Home Secretary undertaking to issue a Royal Commission. That commission was issued, and the commissioners had prosecuted a laborious inquiry, and had taken a large body of evidence. Four of the commissioners had expressed an opinion that it was desirable to abolish the punishment of death; but the remainder were of opinion that that punishment should be retained; and the whole of the commissioners had agreed to a report upon which the present measure was founded. He thought that we were justified in retaining death as the punishment of murder, if we came to the conclusion that it was the most deterrent punishment; and in order to form an opinion on this point, we must see how the fear of death operated upon the criminal class. No one who had ever been present at a trial for murder could doubt that such trials excited far more interest, were attended with far greater solemnity, and produced a far greater effect upon the minds of all present, than trials in which a human life was not at stake. It was also obvious, from the deep anxiety displayed to obtain a remission of the sentence of death whenever it was passed, that in the estimation of society at large that punishment was more severe and more awful than any

other. It seemed to him in the highest degree important, that the criminal class should have every possible inducement to refrain from the commission of the crime of murder. That inducement was offered so long as the penalty of death was inflicted for murder, and for murder alone; but if that punishment was abolished, criminals would often feel that it was their interest to take life in order to destroy the evidence against them. This was not mere speculation on his part. Amongst the returns collected by the commission was a statement from our Minister at Florence, who said that the abolition of the punishment of death for robbery unaccompanied with murder had largely reduced the number of homicides, because the criminals had thus been furnished with a motive to abstain from taking life. He did not think that the substitution of imprisonment or penal servitude would be an adequate substitute for the punishment of death; for, although it was said that the greater certainty of the smaller punishment being inflicted would make it more deterrent than the higher punishment, which the criminal hoped to escape in consequence of the reluctance of the juries to convict of a capital offence, he believed that men who committed murders did not reason in this way. They regarded the matter as a sort of lottery, and did not nicely weigh the chances of conviction. He therefore thought that the commission were quite right in declining to recommend the abolition of capital punishment. It was no slight argument in favour of retaining that extreme penalty in cases of murder that all other nations did so. It was true that capital punishment had been abolished in Tuscany in 1859, but it is impossible to found any satisfactory conclusion upon the experience of the short period which had yet elapsed. According to the Minister of Justice of Italy, the result had been far from satisfactory, since he said that during the last few years there had been a considerable increase of murders committed for the sake of plunder. There were also some of the cantons of Switzerland and some of the small States of Germany in which the punishment of death had been abolished, but in none of the larger European States had this been done. With the slight exceptions he had mentioned, murder was everywhere a capital offence. It was said, however, that we should look to the experience of the United States. The commissioners had returns from seven of those States; but with the exception of Rhode Island and of Wisconsin, none of these States had abolished capital punishment. That being so, he thought the House would agree with the commissioners in retaining the penalty of death. If they abolished that punishment, he should like to know how they could punish a man who, having been condemned to penal servitude for life, should murder his keeper? It was clear that such a crime would escape punishment altogether if capital punishment were abolished. The commission recommended that murder should be divided into murder of the first and the second degree. The first consisted of murder committed deliberately and of malice aforethought; the second of murder committed in the course of escape from, or during the perpetration of some other crime. To the first class they assigned the penalty of death; to the second they assigned the penalty of penal servitude for life. He would not go into the details of the distinction which it was proposed to draw between these two classes of murder, for these points would be more fitly considered in committee. The commission thought that although the punishment for murder should be affixed to certain crimes, yet that the judges should be empowered to record it, instead of pronouncing it in cases where they thought it should not be inflicted. Against this recommendation the judges had strongly protested, and he thought with justice. At present the sentence of death was the sentence of the law; but if the report of the commission was acted upon, it would become the sentence of the judge, who would thus be placed in a very embarrassing position. Then the commission recommended that if wounds were inflicted upon a child within seven days after birth, the person who inflicted them should be punished severely, without any proof that the child was born alive. Upon the whole, he was inclined to concur in that. The last recommendation of the commission was that executions should in future be private. In that he heartily concurred; for he thought that the disadvantages arising from the collection of an immense crowd of disorderly persons at an execution far exceeded the advantages that might be gained by the effect produced upon persons of the criminal class by witnessing the infliction of capital punish-

ment. He was the more inclined to come to this conclusion because the practice of private executions had already been adopted in the United States and in most European countries.

The Earl of *Malmesbury* agreed with the commission in every recommendation except that relating to the privacy of executions. He fully admitted the objections which existed to publicity; but we must not give way to the sentimental considerations suggested by feelings incident to a highly civilised state of society. A criminal was deterred from murder not only by the fear of death, but the apprehension of public disgrace; and if they abolished publicity of execution, they would, therefore, give up one of the deterrent effects of capital punishment, as at present administered upon the minds of the criminals. He had heard from the lips of these men, that they feared in the highest degree the publicity of their impending death and the execrations of the crowd; and, indeed, the degree to which these things did shock them was manifest from the number of cases in which they tried to commit suicide in order to escape the ordeal of a public appearance on the scaffold. The English mind would, he thought, be revolted at the idea of a man's being secretly executed; and he feared that if this bill was passed capital punishment would be altogether abolished in the course of a few years. For his own part he thought that what was wanted was not less, but more publicity. Instead of having criminals always executed in the county town, it would be a great improvement to have this done near the scene of their crimes. By this means a stronger impression would be produced upon the murderer's mind, while a larger number of persons would be subjected to the influence of these spectacles.

The Bishop of *Oxford* said that the evidence taken before a select committee of their Lordships' House a few years ago had conclusively proved that publicity of execution had not a good effect either upon the mind of the criminal or of the spectator. The truth was, that the accidental circumstances of an execution as now carried out tended to divert attention from the intrinsic horror of the scene. The evidence from foreign countries was unanimously to the effect, that executions had had a much more terrible effect upon the criminal classes since they had been private than when they were public. To one suggestion thrown out by that committee he wished to draw particular attention. They recommended that measures should be taken, by the dropping of a flag or the tolling of a bell, to let the criminal classes know that one of their fellows had to be executed. By this means their minds would be seriously impressed, and the horror of the execution would be brought home to them.

Lord *Romilly* was in favour of the abolition of capital punishment. He believed that its deterrent effect had been very much overestimated. It had clearly no operation in cases where crime was committed under the influence of violent passion. What deterred men from the commission of crime was not the severity, but the certainty of punishment. Now it was known that juries required far more evidence to convict when capital punishment was the effect of their verdict than in any other cases. That gave criminals a greater chance of escape in such cases, and thus rendered the punishment less certain, and its deterrent effect proportionately inferior. It was asked what should be done if a criminal under penal servitude committed murder, supposing that the punishment of death was abolished? But the answer to that argument was, that precautions should be taken to render the commission of such a crime impossible. He quite admitted the strength of the argument, that by abolishing the punishment of death we should diminish the inducement of criminals to abstain from adding murder to robbery. But he thought that this might be met by inflicting periodical corporal punishment upon murderers, in addition to penal servitude. Nor did he think that the fear of capital punishment was the main reason why murder was not now added to robbery by professional thieves. On the contrary, it was his belief that this arose principally from a horror of taking life. He believed that respect for life would be promoted by the abolition of capital punishment, and that in this way we should gain an advantage which would far more than compensate for any disadvantage which might accrue from taking such a course. The noble Lord then dwelt upon the effect of capital punishment in investing the criminal with a sort of morbid interest, and warmly supported the abolition of public

executions. He thought that the punishment of some of the offences included by the commission under the head of murder in the second degree was excessive, and remarked that the clauses relating to this subject would require careful consideration in committee. Law had an immense effect upon public opinion and public feeling; and he thought that, if society declared, that for no crime whatever it would invade the sanctity of life, this would do more to diffuse respect for life, and to protect it, than the severest punishment inflicted upon murderers.

Lord *Redensdale* criticised the classification of murders of the first and second degrees contained in the bill. The effect of dividing murders into two classes would be to lead people to think that some murders were not of a deep dye. Indeed, this effect had in some degree been produced, in reference to the crime of infanticide, which had lately increased very materially, mainly in consequence of our having abandoned the practice of executing women convicted of that offence. He believed that great embarrassment would be introduced into the administration of justice by dividing murder into two classes. Moreover, he felt in the strongest manner that death was divinely appointed by God as the penalty of murder, and he did not think that it was for man to sit in judgment upon that ordinance, or to seek to mitigate the punishment imposed under such sanction.

After a few observations from *Lord De Ros*,

The Duke of *Argyll* could not admit that we were legislating under a divine law from which we were not justified in departing. But he had never been able to make up his mind that we could in our present state of society safely abandon the infliction of capital punishment in cases of murder. He thought that besides the deterrent and the reformatory elements of punishment, there was another that should not be lost sight of—the retributive. And it seemed to him that this would not be adequately kept in view if murders of an aggravated character were not punished with death. He highly approved the abolition of public executions, for he thought that they had no deterrent effect, while they tended materially to brutalise those who witnessed them. Some of the details of the present bill would, no doubt, require careful consideration, but he heartily approved of its principles.

Lord *Houghton* saw with great satisfaction the introduction of a measure to abolish the publicity of executions, for he was convinced that this had no good effect, but was, on the other hand, attended with many baneful consequences. He did not think that intramural executions would lead to the abolition of capital punishment. But, at the same time, he had no doubt the abolition of capital punishment was regarded with growing favour by an increasing number of people; and he felt convinced that the arguments in favour of that measure would eventually be felt to preponderate over those against it. For his own part, he confessed that he doubted the deterrent effect of the punishment of death on the criminal classes. On the contrary, he believed that they thought and cared little about it when they were engaged on the commission of offences. The measure now before the House had his cordial approval as, at any rate, a step in the right direction.

The Earl of *Cardigan* thought it would be perfectly impossible to combine the periodical infliction of corporal punishment with penal servitude as a punishment for murder. Public opinion would not endure the infliction of such a punishment.

Lord *Helpier* said the definition of murder embodied in the bill required revision.

After a few words in explanation from Lord *Romilly*,

The Earl of *Shaftesbury* said, that the bill would do little for the preservation of infant life, unless some cognisance was taken of the immense number of still-born children who were found every year. A large number of these were not really still-born at all; and it would not be sufficient merely to punish persons for inflicting wounds upon children within seven days after their birth. Measures should be taken to punish those who deprived children of life by other means. He approved of the substitution of private for public executions; for he believed that the former would have a more deterrent effect than the latter upon the minds both of the murderer and of the criminal classes generally. He believed that the general feeling even of the criminal classes was, that death was the proper punishment for murder; and while this

was the case he felt satisfied that its abolition would tend to a great increase of the crime in question.

The Lord Chancellor having briefly replied,

The bill was read a second time.

The Qualification for Offices Abolition Bill passed through committee.

The Sale of Land by Auction Bill was read a third time, and passed.

HOUSE OF COMMONS.—Thursday, April 26.

THE LANDED ESTATES COURT.

In reply to Mr. Whiteside,

Mr. Fortescue said the Government had determined that the vacant judgeship of this court should be filled up.

THE BANKRUPTCY BILL.

In reply to Mr. Moffatt,

The Attorney-General expressed his regret at the delay in the presentation of this bill, but said it would be in the hands of members on Saturday.

RAILWAY DEBENTURES.

In reply to Mr. Scourfield,

Mr. M. Gibson said it was the intention of the Government to bring in a bill to amend the law relating to securities issued by railway companies. He proposed to give notice on Monday.

BILL IN PROGRESS.

BANKRUPTCY LAW AMENDMENT, &c.

Abstract of Bill to amend and consolidate the Law relating to Bankruptcy in England, and to abolish Imprisonment for Debt on Final Process.

[The Attorney-General and Solicitor-General, and Sir George Grey.]

Sect. 1. Short title and commencement.

2. Repeal of acts.

3. Vesting of courts and buildings.

4. Bankruptcies prior to this act to be prosecuted under repealed acts.

5. Bankruptcies subsequent to this act to be prosecuted under this act.

6. The Court of Bankruptcy continued for the purposes of this act, and to continue a court of record, &c.

7. Limits of the bankruptcy districts may be altered.

8. Jurisdiction of county courts continued.

9. Power to transfer jurisdiction, &c. of commissioners to county courts in case of vacancies.

10. The Court of Appeal in Chancery shall be the Court of Appeal in Bankruptcy, and shall be and form a court of record, and have all the powers of and incident thereto, and all the powers by this act given to the Court of Bankruptcy; and all orders by the Court of Appeal in Bankruptcy shall have the same effect as orders of courts of equity under the act passed in the 1 & 2 Vict. c. 110, and the powers given to such courts by the said statute shall be exercised by the said Court of Appeal; and all the powers of the Court of Chancery as to the trial of questions of fact, either before itself by juries, or by directing an issue to be tried in any court of common law, or otherwise, and all the provisions made by statute or general order in reference to such trials shall be exercised by and applicable to the Court of Appeal sitting in bankruptcy.

11. Decrees, &c. of the said Court of Appeal may be appealed from to the House of Lords.

Commissioners and Registrars of the Court.

12. Existing commissioners to be continued.

13. Vacancies in country districts not to be filled up. Commissioners in London to be reduced to two. Qualification, ten years standing at the bar, or *commissionership of any country district*.

14. Chief registrar and registrars, &c. to hold office during good behaviour, and vacancies may be filled up by Lord Chancellor.

15. Oath to be taken.

16. Power to appoint additional registrars.

17. As to duties and remuneration of county court registrars.

18. The Lord Chancellor may from time to time attach the commissioners and registrars acting in the country to the London district, or to such country district as he shall think fit, and may order any commissioner acting for any district, whether London or country, to hold sittings at such places within his district as the Lord Chancellor may think fit, and may give all necessary directions in that behalf.

19. In case of illness, &c. of commissioner, registrar may act for him, &c.

20. Registrars may act for each other, &c.

Taxing Master.

21. Lord Chancellor empowered to appoint a taxing officer. Tenure of office, duties of removal.

22. Bills to be taxed.

23. Registrars in country districts to be taxing officers.

Comptroller in Bankruptcy.

24. It shall be lawful for the Lord Chancellor to appoint some competent person, to be called "the Comptroller in Bankruptcy," and who shall hold office during good behaviour, subject to dismissal by the Lord Chancellor, by order, for some sufficient reason to be stated in such order; and the comptroller shall hold no other office, and shall not, directly or indirectly, by himself or any partner, be engaged in any trade, or in any business or profession, and he shall not, directly or indirectly, have any management of or dealing with any money of any bankrupt estate.

25. It shall be competent for the comptroller, if it shall appear to him by means of any information officially received by him, or of any complaint made to him by any creditor, that any trustee or inspector appointed under this act is or may be subject to any charge of not faithfully performing the duties, and duly observing all rules and regulations imposed on him or them by statute, general orders, or otherwise relative to the performance of those duties, to inquire into the same, and if not satisfied with the explanation given he shall report thereon to the court, and the court, after hearing such trustees or inspectors thereon, and investigating the whole matter, may remove such trustees or inspectors or any of them from their office, or otherwise deal with them as the justice of the case may require.

26. The comptroller shall at all times, when requisite, report to the court any disobedience by the trustee or inspectors of any requisition or order by him, and generally any matter which he may deem necessary for the due discharge of his office to bring before the court, and it shall be lawful for the court to give and enforce such orders as may be required for carrying out the provisions of this act.

27. In case of the illness or temporary absence of the comptroller, the Lord Chancellor may authorise any one of the comptroller's clerks or other qualified person to discharge the duties of the office for the time.

Accountant in Bankruptcy.

28. The accountant in bankruptcy shall have the care and management of any unclaimed dividends or funds which may be directed to be paid into the Bank of England under this act, and of all funds now standing in the Bank of England in the name of the accountant, and shall hold and deal with the same in such manner as may be by the Lord Chancellor, or by any general rule or order to be made in pursuance of this act, be directed; and the brokerage business of the accountant's office shall be transacted upon such terms and the sum payable to the broker shall be paid in such manner as shall be directed by any such general rule or order, and the amount to be so paid shall be charged by the accountant to the estate or account for which the investment or sale shall be made.

29. Lord Chancellor may make new appointment on vacancy or abolish office of accountant in bankruptcy, substituting chief registrar.

30. Accounts kept at Bank of England called "The Bankruptcy Fund Account" and "Chief Registrar's Account" to be subject to orders of Lord Chancellor.

31. Securities may be purchased. Lord Chancellor may order securities purchased to be sold in certain cases.

32. If securities at any time insufficient to answer the de-

mands of any bankrupt, &c., the sum taken for the purposes of this act to be made good by Parliament.

33. Incidental expenses.

Other Officers of the Court, and Clerks.

34. Offices of official assignee and messenger, &c. abolished, subject to completion of pending business.

35. Ushers.

36. Present clerks of chief registrar, accountant, and Master of Court of Bankruptcy to continue, and on vacancy Lord Chancellor to appoint.

Disqualification of Officers.

37. Disqualification to sit in Parliament, exemption from juries, and parochial offices.

Salaries and Compensations.

38. Salaries of officers of Court of Bankruptcy. (Schedule B.)

39. Superannuation allowances.

40. Treasury may grant pensions to holders of abolished offices.

41. Compensation to clerks.

42. Provision as to annuitants accepting other public offices.

43. Compensations to be paid by Treasury.

Practice of the Court.

44. Sittings of the court. Lord Chancellor to regulate sittings in vacation.

45. Commissioners may sit at chambers.

46. Registrars, their powers and jurisdiction, may sit in chambers. County court registrars.

47. Courts may direct registrar to hold meetings, &c. Expenses of such registrar, &c. Powers of registrar so acting.

48. Persons refusing to answer may be referred to commissioner. Costs.

49. Parties may take opinion of the commissioner. Certificates of registrars at chambers to be binding.

50. Special case.

51. Payment of money by party on judgment being given.

52. Orders in England to be enforced in Scotland and Ireland; and conversely.

53. Sealing and signature of warrants. Records and proceedings to be sealed.

54. Solicitors of the Court of Chancery may practice in bankruptcy, and appear and plead without counsel.

55. Power to award costs. Remedies for recovering costs. Order for costs must be registered, &c. under 23 & 24 Vict. c. 38, and 27 & 28 Vict. c. 112.

Evidence.

56. The several courts exercising jurisdiction under this act may, in all matters within their respective jurisdictions, take the whole or any part of the evidence either viva voce on oath, or by interrogatories in writing, or upon affidavit, or upon commission abroad.

57. Appointment of shorthand writers. Declaration to be made by shorthand writer.

58. Affidavits, declarations, &c. before whom to be sworn. Judicial notice of seal or signature thereto.

59. The Courts of Bankruptcy in England to be auxiliary for the purpose of taking affidavits to be used elsewhere.

60. As to fees on taking oaths, or making declarations in bankruptcy.

61. Affidavits by prisoners.

62. Provisions of the 17 & 18 Vict. c. 34, as to attendance of witnesses out of jurisdiction extended to Court of Bankruptcy.

63. Courts in Scotland to be auxiliary to the court in England in the examination of witnesses, &c. Proceedings for that purpose.

64. Courts in Ireland to be auxiliary in like manner.

65. Courts in England to be in like manner auxiliary to courts in Scotland, Ireland, and elsewhere.

66. Petitions and other proceedings in bankruptcy, and copies, purporting to be sealed with the seal of the court, admissible in evidence.

67. Judicial notice to be taken of signature of commissioner or registrar and seal of court.

68. Evidence as to insolvency, &c. abroad.

69. Advertisements, when evidence.

70. On death of witness, office deposition or copy thereof to be evidence.

Practice in Appeals.

71. Orders of court subject to appeal, except as herein provided.

72. Appeals, &c. to be entered in office of chief registrar, &c.

73. Proceedings not to be stayed by appeal.

General Orders.

74. Purposes for which general orders are to be framed.

75. General orders in county courts.

76. Alteration of general orders. All general orders to be laid before Parliament.

Fees and Stamps.

77. General orders to direct what fees to be paid. Fees to be received in stamps.

78. Certain documents to be on stamped vellum, &c. in lieu of fees.

79. Documents not to be received without a stamp. Proviso where so received through mistake.

80. Commissioners of Inland Revenue to give the necessary directions, to keep separate accounts, &c., and to pay over moneys received to Bank of England.

81. Commissioners of Inland Revenue may appoint persons for sale and distribution of stamps, and make allowance for spoiled stamps.

82. Provisions of acts relating to stamps to be applied to stamps to be provided under this act.

83. Deeds and other instruments relating to bankruptcy not liable to stamp duty, except as in Schedule (D.)

84. Officers, &c. taking fees improperly.

85. Officers of the court may be dismissed for fraud or wilful neglect in relation to stamps.

Abolition of Imprisonment for Debt.

86. No person shall hereafter be taken or charged in execution upon any judgment obtained in any of her Majesty's superior courts, or in any county court or other inferior court, in any action for the recovery of any debt or damages; nor shall any person be attached or imprisoned on any decree or order of any court of equity or in lunacy, made to enforce the payment of money: not to affect the provisions of the 7 & 8 Vict. c. 90, 8 & 9 Vict. c. 127, 9 & 10 Vict. c. 95, with regard to arrest or imprisonment under express order of a judge, made in an action for recovery of a debt wherein such arrest or imprisonment under or in virtue of such order is by such acts authorised.

87. Every judge, in acting under the two last-mentioned statutes, and in deciding whether the party summoned before him has then, or has had since, the judgment obtained against him, sufficient means and ability to pay the debt or damages, or costs so recovered against him, either altogether or by any instalment or instalments as ordered, shall take into consideration all the debts and liabilities of the party so summoned, and his conduct in disposing of his money or property since the judgment was given.

88. Persons in execution at the time of passing this act shall be discharged on application to a judge. Proviso for discharge fraudulently obtained. Sheriffs, &c. not liable as for escape. Judgment, &c. to remain in force notwithstanding the discharge of the debtor.

89. Compensation to persons who may lose emoluments.

Acts of Bankruptcy.

1. Of any Person.

90. Person going, or remaining abroad, or making fraudulent conveyance, with intent to defeat or delay his creditors.

91. Debtor lying in prison, or escaping out of prison.

92. Debtor filing a declaration that he is unable to meet his engagements.

93. Petition by or against debtors followed by adjudication in the foreign dominions of the Crown.

2. Of Traders only.

94. Departing the dwelling, absents, beginning to keep house, fraudulent execution.

95. Compounding with petitioning creditor.
96. Suffering execution to be levied.

3. On Trader Debtor Summons.

97. On creditor making affidavit of his debts, and of his having given notice requiring immediate payment, &c., court may summon the trader. Notice, &c. in cases of partnership.

98. Manner of proceeding upon the appearance of the trader.

99. Admission of debt signed elsewhere than in court, if attested by trader's attorney, to have the same force as an admission signed in court.

100. Acts of bankruptcy on trader debtor summons by default.

101. Acts of bankruptcy on admission of debt.

102. Court may award costs to the creditor or the trader summoned.

103. If creditor bring an action, and do not recover the amount sworn to in his affidavit of debt, and if the affidavit be made for such amount without probable cause, the defendant in the action shall be entitled to costs.

Proceedings to obtain Adjudication of Bankruptcy.

1. Proceedings by Petition.

104. Any creditor, whatever the amount of his debt, may petition for adjudication of bankruptcy against a debtor who has committed an act of bankruptcy within twelve months prior to the filing of such petition, and subsequent to the contraction of such debt, or any part thereof, and whether an act of bankruptcy had been committed prior to such contraction or not; but no debtor shall hereafter be entitled to petition for adjudication against himself.

105. For the purpose of petition there shall be reckoned as debts—

- (1). Debts unsecured:
- (2). Sums due after deducting value of security:
- (3). Interest and costs:

(4). Any credit given to any debtor upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such debtor committed the act of bankruptcy in respect of which the petition is filed, after making from such credit a like deduction for any mortgage, security, or lien held for the same:

But not a debt barred by Statute of Limitations, or proved or provable against the debtor under any prior bankruptcy or insolvency in any part of her Majesty's dominions.

106. Form of petition and affidavit.

107. Court in which to be filed.

108. Power to consolidate, impound, and transfer proceedings upon petitions.

109. Before adjudication against a debtor under sect. 90, the petition to be served. Time for appearance.

110. Court may before adjudication summon witnesses to prove act of bankruptcy.

111. Court to make adjudication, &c. upon proofs of requisite conditions.

112. Where petitioner does not proceed, power for court to adjudicate. Court may proceed notwithstanding death of bankrupt.

113. Petitioning creditor to proceed at his own costs until election of trustee.

2. Proceedings by Judgment-debtor Summons.

114. Judgment-debtor summons, who may sue it out, and when.

115. The like, in cases of disobedience to decree in equity, or order in bankruptcy or lunacy.

116. Court out of which such summons shall issue.

117. Service of summons.

118. Where service cannot be effected, &c., court may order notice in Gazette, &c.

119. Procedure upon appearance of debtor.

120. Debtor refusing to conform may be committed.

121. Adjudication upon summons and non-payment, or for failure to appear. Stamp duty thereupon.

3. Proceedings in respect of Adjudication Abroad.

122. Where debtor who has been adjudged bankrupt, &c. in India or the Colonies, resides or has property in England,

&c., power to obtain adjudication in England, &c., and proceedings thereupon.

4. Proceedings by or against Partnerships.

123. Petition by the public officer of copartnership.

124. Petitions may be presented against one or more partners in a firm; and petitions against two or more persons may be dismissed as to one or more without affecting the rest.

125. In cases of a second or other petition against one or more members of a firm, the same shall be prosecuted in the court in which the first was prosecuted, &c.

Notice and Annulment of Adjudication.

126. No adjudication to be dismissed by reason only of concert.

127. Bankrupt to have notice thereof before advertisement of adjudication, and to be allowed seven days, or such extended time, not exceeding fourteen days, as the court shall think fit, to shew cause against adjudication.

128. When notice of adjudication need not be served on bankrupt.

129. If bankruptcy not disputed within certain time, Gazette to be conclusive evidence.

Interim Preservation of Estate.

130. In case debtor, against whom a petition has been filed, be about to quit England, or to remove or conceal his goods, with intent to defraud creditors, he may be arrested, and his goods seized.

131. It shall be lawful for the court in which a petition for adjudication is filed, whether adjudication can forthwith be made or not, or for the court after adjudication, but before confirmation of a trustee, on special application by a creditor who has filed an affidavit of debt in the form contained in Schedule (N.), either in the petition for adjudication or by a separate petition, with or without service on other parties interested, as the said court may deem necessary, or without such special application, if the court think proper, to take immediate measures for the preservation of the estate until the election and confirmation of a trustee, either by the appointment of a receiver, who shall find such security as may be deemed necessary, and who shall have all the powers hereinafter given to the trustee which are necessary for such preservation, including power to take possession of the bankrupt's property, and to recover debts, or by such other proceedings as may be requisite; and such interim appointments or proceedings shall be carried into immediate effect; but any such order shall be subject to appeal, and may be discharged or varied by the Court of Appeal.

132. After adjudication, the bankrupt's papers may be sealed up.

Transfer of Proceedings.

133. Petition not to be dismissed for error in selection of court.

134. Petition filed in county court may be transferred to Court of Bankruptcy.

135. Petition may be transferred to more convenient district.

136. Procedure on transfer.

137. Appeal against transfer.

Election of Trustee and Inspectors.

138. The court shall, in the order of adjudication, appoint a meeting of the creditors to be held at a specified hour on a specified day, not less than six nor more than twelve days after the expiration of the time for shewing cause against the adjudication, or after the adjudication if it is absolute, at a convenient place (not being any private residence or private chambers) within the district of the court, or if by the same order it shall transfer the petition to another court, then at some such place within the district to which it is transferred, and the time and place so appointed for such meeting of creditors shall be intimated in the notice of the adjudication in the Gazette and newspapers hereinbefore directed.

139. If time for disputing adjudication enlarged, new day to be fixed.

140. Any two creditors who have filed affidavits of debt in the court may, by notice in writing under their hands, given forty-eight hours before such meeting to the registrar of the district within which such meeting is to be held, request him

to attend at the same, and on such notice the registrar, or some person to be deputed by him in writing for that purpose, shall attend at such meeting, and shall preside, and receive the proof of debts tendered by creditors present, and shall mark the declarations, accounts, and other documents produced with his initials, and retain the same till the trustee is appointed, when he shall deliver them to the trustee; and the registrar or his deputy shall, in the presence of the meeting, write and sign the minutes, and enter therein the names and designation of the persons attending as creditors, and the respective amounts for which each person tenders a proof, and whether it is admitted or rejected, and, if admitted, the amount so admitted, and any other circumstances which the said registrar or his deputy shall think fit. When the registrar or a deputy appointed by him is not present, the creditors shall, by a majority in number, elect a chairman; and the chairman shall perform the duties in the preceding section imposed upon the registrar, except that he shall not have power to reject any proof. The meeting shall have power to adjourn for any reasonable time, provided such adjournment do not postpone the meeting for election of trustee beyond the limit of the period within which such meeting is by this act appointed to be held.

141. The creditors who have produced proofs of debt, and who have been entered in the minutes, shall then and there elect, by a majority in value, a fit person to be trustee, and if they think fit a second person as substituted trustee, to act in succession, in case of non-acceptance, death, or disqualification of the person first nominated, and in the case of an adjudication of bankruptcy against several persons as co-partners, the creditors may either elect one trustee for all the estates, or separate trustees for the joint estate and for the estates of all or each of the individual partners, or trustees in succession, as aforesaid. If no trustee be duly elected, the court may either adjourn the meeting for the purpose to a later day, or may annul the adjudication if it shall think fit, and in case of the adjudication being annulled for want of a due election of a trustee, no subsequent adjudication shall be made upon any future petition of the same petitioning creditor in respect of the same debt.

142. If the registrar, or a deputy appointed by him, be present at the election of trustee, and there be no competition for the office, or objection stated to the candidate or candidates, he shall, by an order in the minutes, declare the person chosen by the creditors to be trustee; and if there be competition, or objection to the candidate or candidates, every such objection to the votes or candidates shall be stated at the meeting, and the registrar, or person deputed by him, may, by consent, forthwith decide thereon, or, if required by any of the creditors present, he shall reserve them for the decision of the commissioner, and in such case he shall make a short note of the objection and of the answers, on which the commissioner shall, within four days after the meeting hear the parties *viva voce*, and the commissioner shall then declare the person trustee, or the persons trustees in succession, whom he shall find to have been duly elected by the majority of votes in value tendered for qualified candidates.

143. When the chairman has been elected by the creditors he shall (whether there be any competition or objection or not) forthwith transmit the minutes, proofs, affidavits, and other documents to the registrar, to be retained by him till the trustee shall be confirmed, when he shall deliver the same to the trustee; and if there be no competition or objection, the said registrar shall declare the person or persons elected trustee or trustees in succession; and if there be competition or objection the parties shall, within four days from the date of the said meeting, file with the said registrar notes of objections, and the commissioner shall forthwith hear parties thereon *viva voce*, and give his decision thereon in manner directed in last section.

144. The judgment of the registrar or of the commissioner in the several cases above mentioned, declaring the person or persons elected to be trustee or trustees in succession, shall be given with the least possible delay; and such judgment shall not be subject to review in any court or in any manner whatever; but such judgment shall not affect the right of any creditor to tender the same proof at any subsequent stage of the proceedings. The commissioner shall have power to order the costs of either party to be paid by the other party, if he shall think fit, but no costs of any such proceedings shall in any case whatever be allowed out of the estate.

145. The creditors shall at the meeting, and previous to electing a trustee, fix the amount for which the trustee to be elected shall give security for his management, and generally for the performance of his duties under the act, and shall also decide on the sufficiency of the sureties offered by the several candidates proposed; and the person declared to be trustee shall forthwith file with the registrar a bond of security executed by the trustee and the sureties, approved for him by the meeting, in the form of Schedule (T.), which bond shall be furnished to him by the registrar: provided that the creditors may accept the bond of a guarantee society in lieu of the bond aforesaid.

146. Certificate of appointment of trustee. To be a complete title.

147. The meeting shall also, after the election of trustees, elect by a majority in value two or more creditors, or persons holding proxies from creditors, to be inspectors of the bankruptcy, and the election and appointment of such inspectors shall be according to the same rules as the election and appointment of trustees, except that the inspectors shall not be required to give security nor be confirmed, and their election, when decided, shall be declared by an entry in the minute-book signed by the registrar. If in any case such inspectors shall not be elected, or shall decline to act, the duties by this act imposed on the inspectors shall be performed by the court, on the application to it by the trustee, from time to time, as may be necessary, until inspectors shall be elected by the creditors, and shall be ready to perform their duties.

148. The trustee may be a creditor, not holding an interest adverse to that of the general body of creditors; but not the bankrupt, his father, son, or brother, by blood or marriage, nor any one who within the last six months has been in his employment, nor any one unfit, in the opinion of the court; and the like disqualifications shall apply to the inspectors.

149. Removal or resignation of trustee. Election of a new trustee.

150. Any person holding a proxy for a creditor, and who has been elected an inspector, shall lose that office, upon written intimation being sent by his constituent to the trustee that he has recalled the proxy, and the trustee shall immediately record the intimation in the minute book; and the trustee shall, in all cases where an inspector has declined to act, or resigned, or become incapacitated, call a meeting of creditors for the purpose of electing a new inspector, and such inspector shall be elected in manner hereinbefore provided; and a majority of the creditors assembled at any meeting duly called for that purpose may remove an inspector, and may elect another in his place, in manner before directed.

Proof of Debts.

1. General Rules.

151. *Bona fide* creditors, in respect of debts contracted after an act of bankruptcy, may prove.

152. Notice of acts of bankruptcy to agents of corporate bodies, &c.

153. Proving debt to be an election not to proceed against bankrupt by action.

2. Debts liquidated or certain.

154. *Set-off*.

155. Interest.

156. Discount.

157. Costs, &c.

158. Debt payable by instalments.

159. Rent and other payments falling due at fixed periods.

160. Goods pledged by agent.

161. Partner of two firms.

162. Bottomry or *respondentia* bonds and policies of insurance.

3. Debts contingent or unliquidated.

163. Premiums upon policies of insurance.

164. Contingent debt or liability to be valued by trustee.

165. Unliquidated damages.

166. Annuity creditors.

4. When arising from Guarantee by Sureties.

167. Sureties for payment of annuities.

168. Sureties for the bankrupt.

5. When secured on Bankrupt's Property.

169. A creditor having security for his debt, or having made

any attachment of the goods and chattels of the bankrupt, shall receive upon any such security or attachment no more than a rateable part of such debt, except in respect of any execution or extent levied by seizure and sale upon, or any mortgage of or lien upon, any part of the property of such bankrupt, before the date of the filing of a petition for adjudication of bankruptcy.

170. If a creditor hold a security for his debt over any part of the estate of the bankrupt, he shall, in the declaration tendered for his proof, put a specified value on such security, and deduct such value from his debt, and specify the balance, and if the estate over which the security extends has been sold, he shall specify in his declaration the net proceeds which he has received, or shall be entitled to receive, therefrom, and specify the balance due after deduction thereof; and he shall be entitled in either case to prove for and to vote in respect of such balance, but for no more, without prejudice to the amount of his debt in other respects.

171. When a creditor who holds a security over any part of the estate of the bankrupt has made the declaration of value directed in the preceding section, for the purpose of drawing a dividend on the balance, the trustee, with consent of the inspectors, shall be entitled, at his option, either to require a conveyance or assignment of such security, at the expense of the estate, on payment of the value so specified out of the common fund, or to reserve to such creditor the full benefit of such security; and in either case the creditor shall receive a dividend on the said balance, and no more, without prejudice to the amount of his debt in other respects.

6. Further Deductions from Proof for voting.

172. When a creditor holds another party besides the bankrupt liable for the debt, but from whom the bankrupt would have a right of indemnity or contribution, or holds any security from which the bankrupt has a right of indemnity or contribution, such creditor shall, before voting, make a declaration, in which he shall put a specified value on such right of indemnity or contribution, to the extent to which the bankrupt is entitled thereto, and he shall deduct such value from his debt, and specify the balance, and he shall be entitled to vote in respect of such balance, and no more, without prejudice to his right to prove the full amount of his debt for the purpose of drawing dividends.

173. It shall be lawful for the trustee, with consent of the inspectors, within two months after a declaration, specifying the value of a security or collateral obligation in the several cases before mentioned has been made use of in voting at any meeting, and it shall also be lawful for the majority of the creditors (excluding the creditor making such declaration) assembled at any meeting, and during such meeting, to require from the creditor making such declaration a conveyance or assignment in favour of the trustee of such security, obligation, or claim, on payment of the specified value, with 20. per centum in addition to such value; and the creditor shall be bound to execute such conveyance or assignment, at the expense of the estate: provided that where a creditor has put a value on such security or obligation, he may, at any time before he has been required to convey and assign as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt.

174. Joint creditor entitled to prove under separate estate, for the purpose of voting in the election of trustee.

175. Persons acquiring debts after adjudication not to vote for trustee.

7. Manner of Proof of Debts.

176. When and how debts may be proved. Declaration for proof of debt.

177. The proofs so tendered shall be admitted as sufficient for the purpose of voting at any meeting, subject in the case of the meeting for election of trustee to the decision of the registrar or commissioner, as hereinbefore provided, and in the case of any other meeting to the decision of the court on appeal by the bankrupt, the trustee, or any creditor; provided that such appeal, except where otherwise expressly provided, shall be brought within ten days after the meeting at which the proof was tendered and used; and on such appeal the court may, if it think fit, at the hearing, admit further evidence in support of or against any proof tendered, and on computation of the amount of proofs which it shall find ought to be admitted for the purpose of such voting it shall declare

the result of the vote, and give such orders as may then be proper for carrying it into effect.

178. No creditor shall vote or receive dividends in respect of any debt which is hereinbefore directed to be valued by the trustee until such valuation is made, and before the confirmation of trustee the application for valuation may be made to the court, and the trustee's valuation shall be subject to appeal.

179. Admission of proofs for dividends by trustee. Power to examine witnesses on oath. Proof may be expunged or reduced.

180. Provision for correction of proof.

Examination of Bankrupt.

181. Examination of bankrupt.

182. Court may issue warrant to arrest bankrupt.

183. Examination by trustee, creditor, or court.

184. The bankrupt to prepare a statement of accounts.

185. Statement of accounts to be open to creditors.

186. Bankrupt to make out statement, without assistance, except under special circumstances.

Examination of other Parties.

187. Court may summon other persons.

188. Service of summons where persons kept out of the way.

189. Court may order letters addressed to bankrupt to be delivered to trustee.

190. Witnesses and persons known or suspected to have bankrupt's property, &c., entitled to costs of attendance, &c.

Commitment of Bankrupt or Witness.

191. Penalty on refusal to answer.

192. Examination of persons summoned.

193. Form of warrant for commitment of bankrupt or witness. Copy of his examination to be delivered to person committed.

194. Discharge of person committed.

Second and subsequent Meeting of Creditors.

195. The trustee shall, in the Gazette notice of the examination of the bankrupt, which he is directed in sect. 181 to make, also give notice of his election as trustee, his name and address, and of a day, hour, and place for holding a second meeting of creditors, which day shall be not less than seven nor more than fourteen days after the day fixed for examination of the bankrupt; and also notice of the period hereinafter limited for the proof of debts for participation in the first dividend; and shall also send notice of all these particulars, by letter through the general post, to every creditor who has proved. Prior to the meeting the trustee shall prepare a report setting forth the state of the bankrupt's affairs, and an estimate of what the estate is expected to produce, which report he shall exhibit at the meeting of creditors, and give all explanations relative thereto.

196. Powers of creditors over estate.

197. How meetings to be called. On requisition of one-fourth in value of creditors, or comptroller, trustee, or inspector.

198. Notice of meetings. No notice to be sent in certain cases.

199. Rules as to computing majorities. Proxies for creditors may vote.

General Duties of Trustees and Inspectors.

200. Trustee to take possession of estate and books, and make up inventory.

201. Trustee to recover funds of estate, and deposit in Bank.

202. To be paid by commission, but not to be entitled to charge for assistance.

203. Penalty on trustee retaining funds.

204. Trustee to keep minute-book, and send copy of accounts to comptroller.

205. The inspectors shall superintend the proceedings of the trustee, and their concurrence with him in references to arbitration shall be essential, and they shall also give their advice and assistance relative to the management of the estate, and shall decide as to paying or postponing payment of a dividend, and may meet at any time to ascertain the situation of the bankrupt estate, and any one of them may make

such report as he may think proper to a general meeting of the creditors.

206. Receiver, trustee, and inspector amenable to court.

Appeals from Resolutions of Creditors or Decisions of Trustee or Inspector.

207. Creditor, inspector, or trustee may appeal to court. Power to rescind or vary.

Vesting of Estate in Trustee.

208. Real estate (except copyhold) to vest in trustee.

209. When a conveyance of the property of a bankrupt would require to be registered, the certificate of appointment of the trustee shall be registered.

210. Clauses in the 3 & 4 Will. 4, c. 74, extended to proceedings under petition for adjudication.

211. Copyhold and customary lands of bankrupt. Vendees of copyhold lands shall compound with the lord for their fines.

212. Bankrupt not liable to rents or covenants in conveyances, leases, &c.; and if trustee declines to determine whether he will accept conveyance, &c., any person entitled may apply to the court. Trustees may elect to take lease for limited period.

213. Trustee may execute powers previously vested in bankrupt.

214. Life estates in remainder, &c. not to be sold unless court direct.

215. Personal estate to vest in trustee.

216. Where bankrupt beneficially entitled to stock, transfer to be made to trustee. Any treasurer, &c. or agent of the bankrupt to deliver all moneys, &c.

Realisation of Estate.

217. Titles to property sold not to be impeached, unless proceedings taken to annul, and duly prosecuted.

218. Estates mortgaged &c. may be redeemed by trustee.

219. Mortgagee may bid at sale.

220. Portion of pay, half-pay, salary, or pension of bankrupt to be applicable for creditors.

221. Sequestration of profits of benefice of bankrupt clergyman may be obtained.

222. Search warrants may be issued.

223. No action to be brought against persons acting in obedience to warrant of the court. Proof in such actions that defendant is trustee sufficient to render him liable.

224. Person holding warrant may break open the bankrupt's doors, &c., and seize upon property.

225. Execution of warrant in Scotland or Ireland.

226. Power for meeting of creditors, and court to authorise mortgage or pledge bankrupt's property.

227. Power to sell bankrupt's book debts, goodwill, &c., and pass legal title to sue, &c.

228. Goods in the possession, order, or disposition of the bankrupt to be deemed his property. Proviso for assignment of vessels.

229. Court may order payment of debts admitted to be due to bankrupt; such order to have effect of judgment.

230. Concealing bankrupt's effects. Allowance to persons making discovery. Latent partner.

Conveyances or Contracts by the Bankrupt.

231. Power of court over certain voluntary conveyances, &c. made by bankrupt.

232. Court may proceed when the bankrupt by fraud makes himself accountable to the Crown.

233. Payments, conveyances, contracts, &c., executions against lands (if executed by seizure), and against goods (if executed by seizure and sale), to be valid, if no notice of prior act of bankruptcy; but nothing herein to give validity to payments, &c. by way of fraudulent preference.

234. *Bona fide* purchases not to be impeached by notice of acts of bankruptcy, unless petition be filed within twelve months after the act of bankruptcy.

235. Execution levied before filing petition.

236. Distress not to be available for more than one year's rent due; landlord to prove for the residue.

237. Certain warrants of attorney, &c. given within two months of filing petition to be null and void.

238. Petitioning creditor compounding with debtor after bankruptcy.

239. Where bankrupt is a trustee, the Lord Chancellor may order conveyance or assignment to another trustee.

Actions by or against Trustee.

240. Trustee may, with consent of creditors, institute or defend actions or suits, and, with consent of inspectors, compound for debts due to the estate, or submit disputes to arbitration. Reference to arbitration may be made a rule of court.

241. Court may authorise action in name of trustee and of the partner of bankrupt. Partner to have notice and be at liberty to shew cause. Court may direct partner to have part of proceeds.

242. If adjudication be annulled &c., persons from whom the trustee has recovered &c., discharged from claims by the bankrupt.

243. Suits not to abate by death or removal of trustee.

244. If trustee commences action before time allowed to dispute the bankruptcy has elapsed, debtor to estate may pay money into court.

245. Limitation of actions, three months. General issue. Costs.

246. In actions no proof required of petitioning creditor's debt, trading, or act of bankruptcy, unless notice be given.

247. The same in suits in equity.

Payments to be made in priority.

248. One year's parochial rates to be paid in full. Payment of assessed taxes.

249. Moneys belonging to any friendly society.

250. Three months' wages or salary to clerks or servants. Wages not exceeding 40s. to labourer or workman.

251. Apprentices to bankrupts discharged from their indentures. Sum to be paid in respect of apprentice fees.

Payment of Dividend.

252. Trustee to make up and exhibit to inspectors statement of funds, five months after adjudication. Inspectors to resolve as to payment of dividend, &c.

253. Trustee to examine and reject or admit claims, and make up list of creditors entitled to payment of dividend; and to publish and send notices of payment of dividend. Creditors may appeal within a limited period.

254. Trustee to make up a statement of division.

255. Dividends to be paid, and those disputed or claimed by contingent creditors to be lodged in Bank.

256. At end of eight months trustee to make up statement, &c., and inspectors to resolve as in case of first dividend.

257. Every three months same proceedings as in prior dividends.

258. Dividends may be accelerated in certain cases by creditors.

259. Proceedings when inspectors postpone the dividend.

260. Where estate is chiefly land periods of payment may be altered.

261. Creditors proving before second dividend entitled to receive equivalent for first dividend.

262. Creditor resident abroad may prove at later periods.

263. No action to be brought for dividends, but the remedy to be by application to the court.

264. Unclaimed dividends.

265. Surplus to be paid to bankrupt.

Allowances to the Bankrupt.

266. Allowance to bankrupt for maintenance by four-fifths of creditors at meeting, not exceeding 3l. 3s. per week.

267. Allowance to bankrupt on discharge (as in 12 & 13 Vict. c. 106, s. 195).

268. One partner may receive allowance although the other not entitled.

Bankrupt's Discharge.

269. The bankrupt may at any time after the expiration of four months after the adjudication petition the court to be finally discharged of all debts contracted by him before the date of the adjudication, provided that along with such petition he shall file a certificate by the trustee that he has duly attended the examination and made a full discovery and surrender of his estate, and given all the assistance in his power in its realisation, and that assets have been realised or payments made by or on behalf of the bankrupt sufficient to pay

a dividend of 6s. 8d. in the pound on all the debts or liabilities then proved or contained in the bankrupt's statement of his accounts or believed by the trustee to be due, and that no prosecution has been instituted against the bankrupt under this act, or, if instituted, that he has been acquitted; and the court shall order notice of the petition to be given in the Gazette, and by letter to each creditor; and if, at the distance of not less than twenty-one days from the publication of such notice in the Gazette, and on the certificate being produced as aforesaid, there be no appearance to oppose the petition, the court shall grant a discharge; but if appearance be made by any of the creditors or by the trustee, the court shall judge of any objections against granting the discharge, and shall either grant or refuse the discharge, or defer the consideration of the same for such period as it may think proper; provided that if the bankrupt shall not file the certificate by the trustee aforesaid, or if the certificate shall not state any of the particulars hereinbefore required, it shall be lawful for the bankrupt to state in his petition the reason why such certificate is not filed or is defective, and to adduce evidence in support of such statement; and if the court shall be satisfied that the bankrupt has substantially performed all that is required to be set forth in such certificate, it may grant the discharge: provided also, that no objection shall be admitted as a valid ground for refusing to grant such discharge, unless it shall be thereby established to the satisfaction of the court that the bankrupt has not substantially performed all that is required to be set forth in such certificate as aforesaid, or that a prosecution is pending or is about to be instituted against the bankrupt under this act.

270. After the expiration of six years from the date of the adjudication the bankrupt may apply for, and the court may grant, his discharge, although his estate shall not have paid 6s. 8d. in the pound, as hereinbefore required, provided he shall in all other respects comply with the requisites hereinbefore made necessary to entitle him to his discharge.

271. Rehearing of order of discharge.

272. If order suspended on rehearing, subsequent creditors to prove first against subsequent property.

273. Order, when to be drawn up.

274. Appeal against decision.

275. Effect of discharge.

276. If trustee indebted to bankrupt's estate become bankrupt, his discharge shall not discharge his future effects in respect of such debt.

277. Effect of order in case of partners, &c.

278. Contract of security with intent to induce creditor to forbear opposition. Proviso.

279. Penalty for obtaining money, goods, &c., as an inducement to forbear opposition to discharge.

Trustee's Discharge.

280. After a final division of the funds, the trustee shall call a meeting of the creditors, by an advertisement in the Gazette, to be held not sooner than twenty-one days after such publication, specifying the time, place, and purpose of holding the meeting, and by letters addressed by post to every creditor who has proved as aforesaid, to consider as to an application for his discharge, and at such meeting he shall lay before the creditors the minute book and accounts, with a list of unclaimed dividends, if any, and the creditors may then declare their opinion of his conduct as trustee, and he shall thereafter transmit the minute book to the comptroller, who shall preserve the same, and make a report to the court as to the conduct of the trustee, and the trustee may then apply to the court, who, on considering the petition, with the minutes of the meeting, and like report by the comptroller, and hearing any creditor, may grant or refuse his discharge; and a certified copy of the order shall forthwith be transmitted by the registrar to the comptroller, and shall be entered in the register of bankruptcies, and on discharge being granted the bond of security for the trustee shall be delivered up.

Change from Bankruptcy to Arrangement.

281. Three-fourths in number and value of creditors who have proved may resolve that estate ought to be wound up under deed of arrangement, &c.

282. Resolution to be reported to the court. Power to court to confirm.

283. Court to make declaration of complete execution of

deed of arrangement, and to direct it to be registered; and to annul bankruptcy. Deed, if so registered, to be binding on creditors not executing.

284. Court to have jurisdiction to entertain applications of bankrupt, or any party to the deed, respecting bankrupt's estate and affairs. Questions under the deed to be decided according to the law of bankruptcy.

285. Where bankruptcy to proceed as if no resolution had passed.

286. Where bankruptcy annulled.

Trust Deeds for Benefit of Creditors, Composition and Inspectorship Deeds.

[Sects. 287 to 295 same as sects. 192 to 200 of the act of 1861, except as shown below.]

287. Every deed, &c. made or entered into between a debtor not adjudged bankrupt and his creditors, &c.

(1). A majority in number &c.: such debts shall be computed and proved in the same manner as they would have been computed and proved for the purpose of drawing dividends if the debtor had been adjudged bankrupt; and for the purpose of such proof the trustee or trustees under the deed shall exercise the powers of the trustee in bankruptcy, and his or their decisions shall be subject to appeal in like manner to the Court of Bankruptcy for the district in which a petition for adjudication of bankruptcy against the debtor might have been filed:

(5). Together with &c.: the written assent or approval of the creditors, together with their declarations tendered in proof, shall be delivered to the registrar along with such affidavit or certificate.

289. Every deed, &c. to be registered in the office of the chief registrar, and in default thereof shall not be received in evidence. [N. B.—The bill does not charge deeds registered under this section with advalorem stamp duty.]

291. Jurisdiction of the court, and rights and liabilities of the parties after registration of deed. [Same as sect. 197 of act of 1861, mutatis mutandis, and with this addition:] Any creditor of the debtor, whether party to or assenting to such deed or instrument or not, shall be entitled to make an application to such court to declare whether any such deed or instrument is valid under this act, or whether he is bound by the same, and shall be bound by the decision of the court on such application; and if the court shall determine that it is invalid, it shall have power, if it thinks fit, to delay making a declaration to that effect for such time as it shall think fit, in order to allow an alteration thereof, as hereinafter provided.

292. Memorandum of alteration of deed referred to in sect. 287, may be executed by majority of creditors, and approved by court.

293. After notice of the filing and registration of any such deed or instrument referred to in this title of this act has been given as aforesaid, no execution, sequestration, or other process against the debtor's property in respect of any debt shall be available to any creditor or claimant, without leave of the court: provided always, that no such deed or instrument shall discharge any debtor from debts due to creditors who have not executed the same, unless it shall comprise the debtor's whole property, real and personal, and unless all the creditors of such debtor shall receive a dividend of at least 6s. 8d. in the pound on the amount of their respective debts.

294. In case any petition shall be presented for an adjudication in bankruptcy against a debtor after his execution of such deed or instrument, and pending the time allowed for the registration of such deed or instrument, all proceedings under such petition may be stayed, if the court shall think fit; and in case such deed or instrument shall be duly registered as aforesaid, the petition shall be dismissed.

295. Provision in case debtor cannot obtain assent of requisite majority of creditors.

Registers and Returns.

296. Comptroller to keep register of bankruptcies.

297. To superintend annual returns by trustees. To frame report.

298. Trustee to make an annual return to comptroller.

299. Docket books. Registrars to transmit copies of entries, adjudications, &c., to chief registrar.

300. Accountant, master, and registrars to make annual returns.

Notices.

301. What notices to be sent by post.
302. General orders as to advertisements.

Offences and Criminal Proceedings.

303. Penalty on persons guilty of misdemeanours herein named.
304. Jurisdiction and powers of commissioners in proceeding in respect of bankrupt guilty of any offences hereinbefore named. Provisions of the 11 & 12 Vict. c. 43, extended to this act.
305. Creditors or court may appoint prosecution. Costs of prosecution.
306. Power to direct reference to Attorney-General.
307. False declaration a misdemeanour.
308. False evidence.
309. Inserting advertisements without authority.
310. Forging signature of commissioner or officer, or seal of court, &c., felony.
311. Indictment.
312. Gaoler suffering persons committed, to escape, &c.
313. Appropriation of forfeitures.
314. Power for court to commit persons wilfully disobeying any rule or order of the court.
315. Sects. 114, 115, 116, and 117 of the 9 & 10 Vict. c. 85, to apply to officers acting in execution of warrants or orders of the courts.
316. Definition and explanation of terms.

REGULÆ GENERALES.

RULES OF COURT FOR REGULATING THE PROCEDURE AND PRACTICE IN SUITS BY ENGLISH INFORMATION.

THE RIGHT HON. SIR FREDERICK POLLOCK, Knight, Lord Chief Baron of her Majesty's Court of Exchequer; SIR SAMUEL MARTIN, Knight; SIR GEORGE WILLIAM WILSHERE BRAMWELL, Knight; SIR WILLIAM FRY CHANNELL, Knight; and SIR GILBERT PIGOTT, Knight, Barons of the same Court, do hereby, in pursuance and execution of the power given them by the Crown Suits, &c. Act, 1865, and of every or any other power or authority enabling them in this behalf, order and direct in manner following:—

RULE I.

Printing of Informations.

1. *Consolidated Chancery Orders*, IX, 3, p. 37.—Informations shall be printed on cream wove machine drawing foolscap folio paper 19lbs. per mill ream, in pica type, leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two and a half inches wide, and dates and sums occurring therein shall be expressed in figures instead of words. Every information shall be divided into paragraphs, numbered consecutively.

2. *Ibid.*, XL, 19, and p. 199, rule 4.—*Ibid.*, p. 132.—The payment to be made by a defendant for such printed copies of the information as he requires, shall be at the rate of one halfpenny per folio of seventy-two words.

RULE II.

Service of Copy of Information and Appearance.

1. *Ibid.*, X, 3.—Where a defendant within the jurisdiction of the court is served with a copy of an information in manner provided for by the Crown Suits, &c. Act, 1865, he must appear thereto within eight days after the service of such copy.

2. *Ibid.*, X, 4.—Where any defendant, not appearing to be an infant, or a person of weak or unsound mind, unable of himself to defend the suit, is, when within the jurisdiction of the court, duly served with a copy of the information, in manner provided by the Crown

Suits, &c. Act, 1865, and refuses or neglects to appear thereto within eight days after such service, the informant may, after the expiration of such eight days, and within three weeks from the time of such service, apply to the Queen's Remembrancer to enter an appearance for such defendant, and no appearance having been entered, the Queen's Remembrancer shall enter such appearance accordingly, upon being satisfied by affidavit that the copy of the information was duly served; and after the expiration of such three weeks, or after the time allowed to such defendant for appearing has expired, in any case in which the Queen's Remembrancer is not hereby required to enter such appearance, the informant may apply to the court or a judge for leave to enter such appearance for such defendant, and the court or judge being satisfied that the copy of the information was duly served, and that no appearance has been entered for such defendant, may, if it seem fit, order the same accordingly.

3. *Ibid.*, X, 5.—Any appearance entered at the instance of the informant for a defendant, who at the time of the entry thereof is an infant, or a person of weak or unsound mind, unable of himself to defend the suit, shall be irregular, and of no validity.

4. *Ibid.*, VII, 3.—Where, upon default made by a defendant in not appearing to or not answering an information, it appears to the court or a judge that such defendant is an infant, or a person of weak or unsound mind not so so found by inquisition, so that he is unable of himself to defend the suit, the court or a judge may, upon the application of the informant, order that some proper person be assigned guardian of such defendant, by whom he may appear to and answer, or appear to or answer, the information, and defend the suit. But no such order shall be made unless it appears on the hearing of such application that a copy of the information was duly served, in manner provided by the Crown Suits, &c. Act, 1865, and that notice of such application was, after the expiration of the time allowed for appearing to or for answering the information, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such copy of the information, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian of such infant, unless the court or judge at the time of hearing such application shall dispense with such last-mentioned service.

5. *Ibid.*, X, 6.—Where the court or a judge is satisfied by sufficient evidence that any defendant has been within the jurisdiction of the court at some time not more than two years before the information was filed, and that such defendant is out of the jurisdiction, or that upon inquiry at his usual place of abode (if he had any), or at any other place or places where at the time when the information was filed he might probably have been met with, he could not be found, so as to be served with a copy of the information, and that in either case there is just ground to believe that such defendant has gone out of the jurisdiction, or otherwise absconded, to avoid being served with such copy of the information, or with other process, the court or a judge may order that such defendant do appear at a certain day to be named in the order, and a copy of such order, together with a notice to the effect set forth at the end of this clause, may, within fourteen days after such order made, be inserted in the London Gazette, and be otherwise published as the court or a judge may direct; and where the defendant

does not appear within the time limited by such order, or within such further time as the court or a judge may appoint, then, on proof made of such publication of the order, the court or a judge may order an appearance to be entered for the defendant, on the application of the information.

"Notice.—A. B. Take notice, that if you do not appear, pursuant to the above order, the informant may enter an appearance for you, and the court may afterwards grant to the informant such relief as he may appear to be entitled to on his own shewing."

6. *Ibid.*, X, 7.—Where a person named as a defendant to an information is out of the jurisdiction of the court.

(1). The court or a judge, upon application supported by sufficient evidence in what place or country such defendant is or may probably be found, may order that a copy of the information, and if an answer is required, a copy of the interrogatories may be served on such defendant in such place or country, or within such limits as the court or judge shall think fit to direct.

(2). Such order shall limit a time, after such service, within which such defendant is to appear to the information, such time to depend on the place or country within which the copy of the information is to be served; and where an answer is required, such order shall also limit a time within which such defendant is to plead, answer, or demur, or obtain further time to make his defence to the information.

(3). At the time when such copy of the information shall be served, the informant shall also cause such defendant to be served with a copy of the order giving the informant leave to serve such copy of the information.

(4). And if upon the expiration of the time for appearing it be shewn to the satisfaction of the court or a judge, that such defendant was duly served with such copy of the information, and with a copy of the order, the court or judge may, upon the application of the informant, order an appearance to be entered for such defendant.

7. *Ibid.*, X, 9.—A defendant, notwithstanding that an appearance may have been entered for him by the informant, may afterwards enter an appearance for himself in the ordinary way; but such appearance by such defendant shall not affect any proceeding duly taken or any right acquired by the informant under or after the appearance entered by him, or prejudice the informant's right to be allowed the costs of the first appearance.

8. *Ibid.*, III, 5.—Every party defending in person shall cause to be written or printed upon every demurrer, plea, answer, or other plea or proceeding, and upon all instructions which he may leave at the Queen's Remembrancer's office for any appearance or other purpose, his name and place of residence, and also (if his place of residence shall be more than three miles from the Queen's Remembrancer's office) another proper place (to be called his address for service), which shall not be more than three miles from the said office, where writs, notices, and other documents, proceedings, and written communications may be left for him.

RULE III.

Amendment of Informations.

1. *Ibid.*, IX, 18.—Where, in amending an information, no addition or insertion of more than 180 words in any one place is made, the information may be amended by written alterations in the printed infor-

mation which has been filed, and by written additions on paper to be interleaved therewith, if necessary; but in all other cases the amendment must be made by a reprint of the information.

2. The practice of amending a defendant's copy of the information shall, with respect to informations filed after these rules come into operation, be abolished.

Ibid., IX, 20.—A copy of an amended information, whether upon an amendment by a reprint, or by such alterations and additions as mentioned in the first clause of this rule, shall be served upon the defendant or his solicitor; and such copy may be partly printed and partly written, if the amendment is not made by a reprint; and in every case the copy to be served shall be first so marked by the proper officer of the court as to indicate the filing of such amended information, and the date of the filing or amendment thereof.

4. *Ibid.*, IX, 21.—Where a defendant defends by a solicitor, service upon such solicitor of a copy of the amended information, whether wholly printed or partly printed and partly written, shall be good service on such defendant.

5. *Ibid.*, IX, 22.—Where a defendant defends in person, service at the address for service of such defendant of a copy of the amended information, whether wholly printed or partly printed and partly written, shall be good service on such defendant.

RULE IV.

Interrogatories.

1. *Ibid.*, XI, 2.—Where the informant requires an answer to an information from any defendant or defendants thereto, the interrogatories for the examination of such defendant or defendants shall be filed within eight days after the time limited for the appearance of such defendant or defendants.

2. *Ibid.*, XI, 3.—After the expiration of eight days from the time limited for the appearance of any defendant, no interrogatories shall be filed for the examination of such defendant without the special leave of the court or of a judge, granted upon hearing the parties.

3. *Ibid.*, XI, 4.—Where a defendant required to answer appears in person or by his solicitor within the time limited for that purpose by the rules of the court, the informant shall, within eight days after the time allowed for such appearance, deliver to such defendant or to his solicitor a copy of the interrogatories so filed as aforesaid, or of such of them as the particular defendant is required to answer; and the copy so to be delivered shall be examined with the original by the clerks of the Queen's Remembrancer; and they, on finding that the same is properly written, shall mark the same as an office copy.

4. *Ibid.*, XV, 5.—Where a defendant to a suit does not appear in person, or by his own solicitor, within the time allowed for that purpose by the rules of the court, and the informant files interrogatories for his examination, the informant may deliver a copy of such interrogatories so examined and marked as aforesaid to such defendant, at any time after the time allowed to such defendant to appear, and before his appearance in person or by his own solicitor, or the informant may deliver a copy of such interrogatories so examined and marked as aforesaid to the defendant or his solicitor, after the appearance of such defendant in person or by his solicitor, but within eight days after such appearance.

RULE V.

Times allowed in Procedure.

1. *Ibid.*, XXXVII, 3.—A defendant may demur alone

to an information within twelve days after his appearance thereto, but not afterwards.

2. *Ibid.*, XXXVII, 4.—A defendant required to answer an information, whether original or amended, must put in his plea, answer, or demurrer thereto, not demurring alone, within twenty-eight days from the delivery to him or his solicitor of a copy of the interrogatories which he is required to answer, or within such further time as the court or a judge may allow.

If he does not, he is subject to the following liabilities:—

- (1). An attachment may be issued against him.
 - (2). If the sheriff takes the defendant under the attachment, and accepts bail, and makes his return accordingly, the informer may, by motion, of course, obtain an order directed to the tipstaff of her Majesty's Court of Exchequer, to bring the defendant to the bar of the court; and upon the defendant's being brought to the bar of the court, the court may, if it think fit, absolutely commit him to Whitecross-street prison until he has put in his answer.
 - (3). If the sheriff under the attachment arrests the defendant, and sends him to prison, or, finding him already in custody, detains him, and makes his return accordingly, the informant may, by motion, of course, obtain a writ of habeas corpus to bring the defendant to the bar of the court; and upon the defendant's being so brought to the bar of the court, the court may, if it think fit, absolutely commit him to Whitecross-street prison until he has put in his answer.
 - (4). The informant may file a traversing note, or proceed to have the information taken pro confesso against the defendant.
3. *Ibid.*, XXXVII.—A defendant who is served with a copy of an information, whether original or amended, and is not required to answer the same, may, without any leave of the court or a judge, put in a plea, answer, or demurrer, not demurring alone, within fourteen days after the expiration of the time within which he might if required to answer, and appearing within the time limited for his appearance, have been served with interrogatories for his examination in answer to the information.
4. *Ibid.*, XXXVII, 6.—Where a defendant is ordered to answer amendments and exceptions together, he must put in his further answer and his answer to the amendments within fourteen days after he shall have been served with interrogatories for his examination in answer to the amended information, or within such further time as the court or a judge may allow. If he does not he is subject to the same liabilities as are mentioned in the 2nd clause of this rule.
5. The answer of a defendant shall be deemed sufficient.
- (1). Where no exception for insufficiency are filed thereto within six weeks after the filing of such answer.
 - (2). Where exceptions being filed the informant does not set them down to be argued in the term next following the filing of such exceptions.
 - (3). Where a further answer is filed, and the old exceptions are not set down to be argued in the term next following the filing of such further answer.
6. *Ibid.*, XXXIII, 2.—Unless the court or a judge give special leave to the contrary, there must be at least two clear days between the service of a notice of motion and a day named in the notice for hearing the motion. And in the computation of such two clear

days, Sundays and other days in which the Queen's Remembrancer's office is closed shall not be reckoned.

7. The times limited in this and the others of these rules shall apply both to town and country causes; and in all cases not provided for by these rules, the times in all causes shall be the same as those heretofore allowed in town causes.

(To be continued).

CALLS TO THE BAR.

THE undermentioned gentlemen have been called to the Bar:—

LINCOLN'S INN.—Charles Meeking, jun., Esq., B.A.; Conrad Goodridge Howell, Esq., B.A.; Marcus Martin, jun., Esq.; George Curtis Price, Esq., B.A.; William Henry Allcard, Esq.; John Armine Willis, Esq., M.A.; Arthur Raymond Kirby, Esq.; John Davies Devonport, Esq., M.A.; John Batten, jun., Esq., B.A.; and William George Tanner, Esq.

MIDDLE TEMPLE.—John Watton Teevan, Esq., B.A.; Trin. Hall, Camb., and M.A., Univ. Lond.; Denis Maurice O'Connor, Esq., M.A., LL.B.; David Louis Landale, Esq., B.A.; Samuel Butler Provis, Esq., B.A.; John Edge, Esq., A.B., LL.B.; Ange Edmond de Lapejre, Esq.; John Lascelles, Esq., B.A.; Charles Wentworth Dilke, Esq., LL.B.; William Marsh Harvey, Esq.; John Dickinson, Esq.; Ambrose Sutton, Esq.; Joseph William Lowthorpe-Green, Esq.; and Henry Eugène Desmarais, Esq.

GRAY'S INN.—James Sheppard Scott, Esq.

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The Jurist

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THE JURIST.

LONDON, MAY 12, 1866.

ALTHOUGH an interpretation has been put on the meaning of the word "value," in the 192nd section of the Bankruptcy Act, 1861, with all the weight of an unanimous judgment of great authority, still that much-vexed question can hardly be said to be finally settled until there is a decision upon it by the court of last appeal, the House of Lords. It is true that new legislative provisions may materially alter the terms of the clauses as to deeds of arrangement; but in the meantime many estates will be dealt with under the present enactment, and the rights of the parties determined by it. The 192nd section, then, enacts, that every deed or instrument made for the purposes therein described shall be as valid and effectual and binding on all the creditors of the debtor as if they were parties to and had duly executed the same, provided certain conditions be observed, the first of which is as follows:—"1. A majority in number representing three-fourths in value of the creditors of such debtor, whose debts shall respectively amount to 10*l.* and upwards, shall, before or after the execution thereof by the debtor in writing, assent to or approve of such deed or instrument." And the interpretation put upon this condition by the court of appeal in the Exchequer Chamber (*Whittaker v. Lowe*, 4 H. & C. 190) is, that in estimating the requisite majority in value, the value of the securities held by them ought not to be deducted from the amount of their debts. Lord Westbury had expressed the exactly opposite view in *Ex parte Smith* (10 L. T., N. S., 551); and in a recent case Lord Cranworth, though he felt bound by the decision of the court of error in the Exchequer Chamber, evidently was impressed with Lord Westbury's dictum, and the reasons on which it was founded. *Re Stark* (12 Jur., N. S., part 1, p. 40) was the case of an application for an order directing the registration of a trust deed under the Bankruptcy Act, 1861, sect. 192, where, in reckoning the majority in number, representing three-fourths in value, certain creditors holding security had been included in the number assenting, without deducting the amount of their securities; whereas if it had been deducted, there would not have been the requisite majority. The registrar, on the authority of Lord Westbury's observations in *Ex parte Smith*, declined to receive the deed. Lord Cranworth, L. C., said that, in his opinion, the dictum of Lord Westbury in *Re Smith* was consistent with reason; but that he felt himself bound by the decision of the Court of Exchequer Chamber, where the question was fully considered, and had been determined by the judges of that Court; he must, therefore, order the deed to be registered.

We may observe, that in *Re Smith* the point did not come before Lord Westbury for actual decision. The circumstances under which the case came before him rendered the consent of the parties necessary before he could decide the point. But the considerations he threw out were as follows:—"His Lordship desired to be informed what was the course of pro-

cedure under a Scotch sequestration?" What, it might be asked, was the "value" of a debt, except the amount of the debt, minus the property held by the creditor? Security was substantially a part payment of the debt. Then the section describes a majority of creditors as "a majority in number representing three-fourths in value." Creditors were ranked according to their stake in the estate of the debtor. But the estate of the debtor must mean the estate distributable amongst all the creditors, and the distributable estate was the property minus the specific charges upon it. Then if a creditor under a trust deed was in eodem statu with a creditor who has proved, a creditor proves for his debt minus the security; and a creditor's debt under a trust deed must be valued upon the same condition as a debt in bankruptcy is proved; i. e. for the balance, after deducting the security. Then if that be so, in estimating the value of a debt, the unpaid part of the debt can only be taken into account. Then comes the question, what was the value of the security? If the debtor valued the security, must it not be at his own peril? The debtor could only obtain the benefit of the statute. By observing its conditions, was it not, therefore, his duty to put upon the security its true value? He would have to sustain the propriety of what he had done. How could there be an exact analogy, except by applying the same principle to all creditors alike, whether they had executed the deed, or were bound thereby?

Nevertheless, in *Ex parte Godden, In re Shettle* (1 De G. & S. 260), the Lords Justices held that the word "creditors" in the first condition specified in the 192nd section of the Bankruptcy Act, 1861, means, and extends to creditors holding security, good or bad, sufficient or insufficient, as well as creditors, wholly without security; and in reckoning the proportion of assenting creditors under that section, the debts due to secured as well as unsecured creditors must be taken into account. The Court of Common Pleas in *Turquand v. Moss* (17 C. B., N. S., 15; 10 Jur., N. S., part 1, p. 824) acted on the authority of *Ex parte Godden*. The Court of Exchequer, in *Whittaker v. Lowe*, held themselves bound by *Turquand v. Moss*; saying that, without entering further into the question, the rule would be discharged on the authority of *Turquand v. Moss*, and that it was to be understood that the decision rested exclusively on that case. (10 Jur., N. S., part 1, p. 530). *Whittaker v. Lowe* was carried from the Court of Exchequer into the court of appeal in the Exchequer Chamber, which affirmed the judgment of the Court below.

It is to be observed that, in *Turquand v. Moss*, Erle, C. J., expressed his concurrence with the reasons given by the Lords Justices in *Ex parte Godden*, the actual ground of his decision, however, being that the Lords Justices had decided the point, and that, therefore, it must be looked upon as *res judicata*; and Williams, J., said, "I also am of opinion that we must decide this case upon the authority of the express judgment delivered by the Lords Justices in *Ex parte Godden*. Although there was another ground upon which the judgment in that case proceeded, the very point now under consideration was argued, and a deliberate judgment pronounced upon it." And Byles, J., said, "I am also of opinion that we are entirely bound by the authority of the case decided by the Lords Justices. But for that decision, I must confess, I should have felt inclined to adopt a different conclusion. The case of a creditor having a deposit of goods, with a power of sale, stands very much in the same position, I should have thought, as a case of set-off, or of mutual credit."

In *Whittaker v. Lowe*, in the Exchequer Chamber, Willes and Blackburn, JJ., each delivered judg-

ments. Mellor, Smith, and Lush, JJ., concurred. The limits of our space will not permit us to set out these judgments in extenso; and as they consist of a continuous chain of reasoning, we can hardly make extracts, but must refer our readers to the full report, 4 H. & C. 112, 119. We may, however, cite a few words from the judgment of Mr. Justice Willes, which raise the issue. He takes the same starting point as Lord Westbury, and says (4 H. & C. 115), "The real question is, what is the meaning of 'value of creditors,' taken with the context in the first condition of the 192nd section? 'The value of creditors of such debtor' is a loose expression, and should be read, the 'value of the debts owing to the creditors of such debtor.'" In the same way Lord Westbury asks, "What is the value of a debt?"

In *Beck v. Smith* (2 M. & W. 195), Parke, B., said it was a very useful rule in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance; in which case the language may be verified or modified so as to avoid such inconvenience, but no further.

No strain of language is needed in construing the word "value," as used in the 192nd section, to mean the amount of the debt, minus that part of it which is met by the security held by the creditor. It may be supposed that the Legislature did not simply mean the "amount" of the debt, instead of the "value," or it would not have used that term. "Value" implies the result of an estimate or appraisal of some kind, whatever the process may be. The value of a thing is its estimated worth; and "the value" of the debt due to the creditor would, in its ordinary meaning, applied to the subject-matter of the 192nd section, mean its estimated worth, as coming in under the deed of arrangement; in other words, the amount provable under the arrangement, and in respect of which the creditor assents to the arrangement. This is using the word "value" in its ordinary sense. The other construction, we submit, substitutes "amount" for "value;" makes the section run counter to the general principle of administration of estates in bankruptcy; and leads to this remarkable state of things, that a majority of secured creditors may compel the rest, who have no security, to accept the smallest dividend in full of all their debt.

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Tuesday.... May 22	Motions and General Paper.
Wednesday 23	General Paper.
Thursday 24	Motions, Adjourned Summonses, and General Paper.
Friday 25	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday 26	No Sitting.—Her Majesty's Birthday kept.
Monday..... 28	
Tuesday..... 29	General Paper.
Wednesday 30	
Thursday 31	Motions, Adjourned Summonses, and General Paper.

Friday	June 1	Petitions, Adjourned Summonses, and General Paper.
Saturday	2	Short Causes, Adjourned Summonses, and General Paper.
Monday	4	
Tuesday	5	General Paper.
Wednesday	6	
Thursday	7	Motions, Adjourned Summonses, and General Paper.
Friday	8	Petitions, Adjourned Summonses, and General Paper.
Saturday	9	Short Causes, Adjourned Summonses, and General Paper.
Monday	11	General Paper.
Tuesday	12	Motions, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART
At Lincoln's Inn.*

Tuesday....	May 22	Motions and Causes.
Wednesday	23	Causes.
Thursday	24	Motions and Causes.
Friday	25	Petitions, Short Causes, and Causes.
Saturday	26	<i>No Sitting.—Her Majesty's Birthday kept.</i>
Monday	28	
Tuesday	29	Causes.
Wednesday	30	
Thursday	31	Motions and Causes.
Friday	June 1	Petitions and Causes.
Saturday	2	Short Causes and Causes.
Monday	4	
Tuesday	5	Causes.
Wednesday	6	
Thursday	7	Motions and Causes.
Friday	8	Petitions and Causes.
Saturday	9	Short Causes and Causes.
Monday	11	Causes.
Tuesday	12	Motions and Causes.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.
At Lincoln's Inn.*

Tuesday....	May 22	Motions and General Paper.
Wednesday	23	General Paper.
Thursday	24	Motions and General Paper.
Friday	25	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday	26	<i>No Sitting.—Her Majesty's Birthday kept.</i>
Monday	28	
Tuesday	29	General Paper.
Wednesday	30	
Thursday	31	Motions and General Paper.
Friday	June 1	General Paper.
Saturday	2	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	4	
Tuesday	5	General Paper.
Wednesday	6	
Thursday	7	Motions and General Paper.
Friday	8	General Paper.
Saturday	9	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday	11	General Paper.
Tuesday	12	Motions and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

RULES OF COURT FOR REGULATING THE PROCEDURE AND PRACTICE IN SUITS BY ENGLISH INFORMATION.

(Continued from p. 184).

RULE VI.

Printing of Answers.

1. *Chancery Order of 6th March, 1860.*—The practice of engrossing answers on parchment shall henceforth be discontinued, and a defendant (except as otherwise provided by the 5th clause of this rule) is to file his answer, divided into paragraphs, numbered consecutively, and written bookwise upon paper of the same size and description as that on which informations are printed.

2. At the time when defendant files his answer, he is to leave with the Queen's Remembrancer a fair copy thereof (without the schedules (if any) of accounts or documents), and the clerks of the Queen's Remembrancer are to examine and correct such copy with the answer filed, and return it so examined, with a certificate thereon that it is correct and proper to be printed.

3. A defendant is then to cause his answer to be printed from such certified copy on paper of the same size and description, and in the same type, style, and manner on and in which informations are required to be printed, and before the expiration of four days from the filing of his answer is to leave a printed copy thereof with the Queen's Remembrancer, with a written certificate thereon by the defendant's solicitor, or by the defendant if defending in person, that such print is a true copy of the copy of the answer so certified; and if such printed copy shall not be so left the defendant shall be subject to the same liabilities as if no answer had been filed.

4. At any time after the expiration of such four days the defendant, within forty-eight hours after the same shall have been demanded in writing, is to have ready for delivery to the informant an official and certified printed copy of the answer.

5. Notwithstanding the preceding clauses of this rule, a defendant is to be at liberty to swear to and file a printed answer.

6. On receiving from the informant a demand for an official and certified printed copy of the answer, the defendant is to get a printed copy thereof examined by the clerks of the Queen's Remembrancer with the answer as filed, and to stamp such copy with a stamp for 5s.; and the clerks of the Queen's Remembrancer, on finding that such copy is duly stamped and correct, are to certify thereon that the same is a correct copy, and to mark the same as an office copy.

7. Such copy is, on demand, to be delivered to the informant, who, on receipt thereof, is to pay to the defendant the amount of the stamp thereon, and at the rate of 4d. per folio for the same.

8. The informant is also to be entitled to demand and receive from the defendant any additional number of printed copies of his answer not exceeding ten, on payment of the same at the rate of one halfpenny per folio.

9. After all the defendants who are required to answer shall have filed their answers, a co-defendant is to be entitled to demand and receive from any other defendant any number of printed copies of his answer, not exceeding six, on payment for the same at the rate of one halfpenny per folio.

10. Office copies of schedules to answers of accounts or documents are to be obtained according to the practice now existing for obtaining office copies of answers.

11. The clerks of the Queen's Remembrancer are not to certify or mark any printed copy of an answer which has any alteration or interlineation in writing.

12. No costs are to be allowed for any written brief of an answer, unless the court or a judge shall direct the allowance thereof.

13. The clauses of this rule, other than clause 1, are not to apply to answers filed by defendants defending in formâ pauperis.

RULE VII.

Taking Informations Pro Confesso.

1. *Consolidated Chancery Orders, XXII.*—Upon the execution of an attachment for want of answer against any defendant, or at any time within three weeks afterwards, the informant may cause such defendant to be served with a notice of motion to be made on some day in the following term, not less than fourteen days after the day of such service, that the information may be taken pro confesso against such defendant, and thereupon, unless such defendant has in the meantime put in his answer to the information, or obtained further time to answer the same, the court, if it so think fit, may order the information to be taken pro confesso against such defendant, either immediately, or at such time, and upon such terms, and subject to such conditions as, under the circumstances of the case, the court shall think proper.

2. Where any defendant, whether within or not within the jurisdiction of the court, does not put in his answer in due time after appearance entered by or for him, and the informant is unable with due diligence to procure a writ of attachment or any subsequent process, or want of answer to be executed against such defendant by reason of his being out of the jurisdiction of the court, or being concealed, or for any other cause, then such defendant shall, for the purposes of enabling the informant to obtain an order to take the information pro confesso, be deemed to have absconded to avoid, or to have refused to obey, the process of the court.

3. Where any defendant, who, under the 2nd clause of this rule, may be deemed to have absconded to avoid or to have refused to obey the process of the court, appears in person or by his own solicitor, the informant may serve upon such defendant or his solicitor a notice that on a day in such notice named (being not less than fourteen days after the service of such notice) the court will be moved that the information may be taken pro confesso against such defendant; and the informant must, upon the hearing of such motion, satisfy the court that such defendant ought, under the provisions of the 2nd clause of this rule, to be deemed to have absconded to avoid or to have refused to obey the process of the court; and the court, if so satisfied, and if an answer has not been filed, may, if it so think fit, order the information to be taken pro confesso against such defendant, either immediately, or at such time, or upon such further notice as, under the circumstances of the case, the court may think proper.

4. Where any defendant who, under the 2nd clause of this rule, may be deemed to have absconded to avoid or to have refused to obey the process of the court, has had an appearance entered for him under the 2nd, 5th, or 6th clause of rule 2, and does not afterwards appear in person, or by his own solicitor, the informant may cause to be inserted in the London Gazette a notice that on a day in such notice named (being not less than four weeks after the first insertion of such notice in the London Gazette) the court will be moved that the information may be taken pro confesso against such defendant, and the informant must, upon the hearing of such motion, satisfy the court that such defendant ought, under the provisions of the 2nd clause of this rule, to be deemed to have absconded to avoid, or to have refused to obey, the

process of the court, and that such notice of motion has been inserted in the London Gazette at least once in every entire week (reckoned from Sunday morning to Saturday evening) which shall have elapsed between the time of the first insertion thereof and the time for which the said notice is given; and the court, if so satisfied, and if an answer has not been filed, may, if it so think fit, order the information to be taken pro confesso against such defendant, either immediately, or at such time, or upon such further notice as, under the circumstances of the case, the court may think proper.

5. Any defendant, being in custody for want of his answer, and submitting to have the information taken pro confesso against him, may apply to the court upon motion, with notice to be served upon the informant, to be discharged out of custody, and thereupon the court may order the information to be taken pro confesso against such defendant, and may order him to be discharged out of custody, upon such terms as appear to be just, unless it appears, from the nature of the informant's case, or otherwise, to the satisfaction of the court, that justice cannot be done to the informant without discovery, or further discovery from such defendant.

6. No cause in which an order is made that an information be taken pro confesso against the defendant shall be heard on the same day on which the order is made, but the cause shall be set down to be heard, and the court, if it so think fit, may appoint a special day for the hearing thereof.

7. A defendant against whom an order to take an information pro confesso is made may appear at the hearing of the cause, and where he waives all objection to the order, but not otherwise, he may be heard to argue the case upon the merits as stated in the information.

8. Upon the hearing of a cause in which an information has been ordered to be taken pro confesso, such decree shall be made as to the court shall seem just; and in the case of any defendant who has appeared at the hearing, and waived all objection to such order to take the information pro confesso, or against whom the order has been made after appearance, by himself or his solicitor, or upon notice served on him, or after the execution of a writ of attachment against him, the decree shall be absolute.

9. In pronouncing the decree the court may, either upon the case stated in the information, or upon that case and a motion by the informant for that purpose, as the case may require, order a receiver of the real and personal estate of the defendant, against whom the information has been ordered to be taken pro confesso, to be appointed, with the usual directions, or direct a sequestration of such real and personal estate to be issued, and may (if it appear to be just) direct payment to be made out of such real or personal estate of such sum of money as at the hearing, or any subsequent stage, of the cause the informant shall appear to be entitled to.

10. A decree founded on an information taken pro confesso is so be entered as other decrees.

11. After a decree founded on an information taken pro confesso has been entered, an office copy thereof shall (unless the court shall dispense with service thereof) be served on the defendant against whom the order to take the information pro confesso was made, or his solicitor; and where the decree is not absolute, under the 8th clause of this rule, such defendant or his solicitor shall be at the same time served with a notice to the effect, that if such defendant desires permission to answer the informant's information, and set aside the decree, application for that purpose must be made to the court within the time specified in the notice, or that otherwise such defend-

ant will be absolutely excluded from making any such application.

12. Where such notice as is mentioned in the last preceding clause of this rule is to be served within the jurisdiction of the court, the time therein specified for such application to be made by the defendant shall be fourteen clear days after the service of such notice, or in case the court be not sitting at the expiration of such fourteen clear days, then on the first day of the term next following the expiration of such fourteen clear days; but where such notice is to be served out of the jurisdiction of the court, such time shall be specially appointed by the court, on the ex parte application of the informant.

13. No proceeding shall be taken, and no receiver appointed under the decree, nor any sequestrator under any sequestration issued in pursuance thereof, shall take possession of, or in any manner intermeddle with, any part of the real or personal estate of a defendant, and no other process shall issue to compel performance of the decree, without leave of the court or a judge, to be obtained after notice served on such defendant or his solicitor, unless the court or a judge shall dispense with such service.

14. Any defendant waiving all objection to take the information pro confesso, and submitting to pay such costs as the court may direct, may, before enrolment of the decree, have the cause reheard upon the merits stated in the information, the petition for rehearing being signed by counsel, as other petitions for rehearing.

15. Where a decree is not absolute, under the 8th clause of this rule, the court may order the same to be made absolute, on the motion of the informant made.

- (1). After the expiration of three weeks from the service of a copy of the decree on a defendant, where the decree has been served within the jurisdiction:
- (2). After the expiration of the time limited by the notice provided for by the 11th clause of this rule, where the decree has been served without the jurisdiction:
- (3). After the expiration of three years from the date of the decree, where a defendant has not been served with a copy thereof.

And such order may be made either on the first hearing of such motion, or on the expiration of any further time which the court may, on the hearing of such motion, allow to the defendant for moving for leave to answer the information.

16. Where the decree is not absolute, under the 8th clause, and has not been made absolute under the 15th clause of this rule, and a defendant has a case upon merits not appearing in the information, he may apply to the court by motion, supported by an affidavit, stating such case, and submitting to such terms with respect to costs and otherwise as the court may think reasonable for leave to answer the information; and the court, if satisfied that such case is proper to be submitted to the judgment of the court, may, if it think fit, and upon such terms as seem just, vacate the enrolment (if any) of the decree, and permit such defendant to answer the information; and where permission is so given to put in an answer, leave may be given to file a separate replication to such answer, and issue may be joined, and witnesses examined, and such proceedings had, as if the decree had not been made, and no proceedings against such defendant had been had in the cause.

17. The rights and liabilities of any defendant under a decree made upon an information taken pro confesso shall extend to the representatives of any deceased defendant, and to any persons claiming under any person who was defendant at the time when the

decree was pronounced; and with reference to the altered state of parties, and any new interests acquired, the court may, upon motion served in such manner, and supported by such evidence, as, under the circumstances of the case, the court may deem sufficient, permit such proceedings to be taken as the nature and circumstances of the case require, for the purpose of having the decree (if absolute) duly executed, or for the purpose of having the matter of the decree (if not absolute) duly considered, and the rights of the parties duly ascertained and determined.

RULE VIII.

Traversing Note.

1. *Consolidated Chancery Orders*, XIII, 1.—After the expiration of the time allowed to a defendant to plead, answer, or demur (not demurring alone) to any information, whether original or amended before answer, which he has been required to answer, if such defendant has not filed any plea, answer, or demurrer, the informant may, if he think fit, file a note at the Queen's Remembrancer's office to the following effect:—"The informant intends to proceed with the cause as if the defendant had filed an answer traversing the case made by the information."

2. *Ibid.*, 2.—After the expiration of the time allowed to a defendant to plead, answer, or demur (not demurring alone) to an information, amended after answer, which he has been required to answer, if such defendant has not filed any plea, answer, or demurrer, the informant may, if he think fit, file at the Queen's Remembrancer's office a note to the following effect:—"The informant intends to proceed with the cause as if the defendant had filed an answer traversing the allegations introduced into the information by amendment."

3. *Ibid.*, 3.—After the expiration of the time allowed to a defendant to put in his further answer to any information, if such defendant shall not have put in any further answer the informant may, if he think fit, file at the Queen's Remembrancer's office a note to the following effect:—"The informant intends to proceed with the cause as if the defendant had filed a further answer traversing the allegations in the information whereon the exceptions are founded."

4. *Ibid.*, 4.—Where a demurrer or plea to the whole information is overruled, the informant, if he does not require an answer, may, if he think fit, immediately file his note in manner directed by the 1st or 2nd clause of this rule, as the case may require, and with the same effect, unless the court, upon overruling such demurrer or plea, gives time to the defendant to plead, answer, or demur, and in such case, if the defendant does not file any plea, answer, or demurrer within the time so allowed by the court, the informant, if he does not then require an answer, may, if he think fit, on the expiration of such time, file such note.

5. *Ibid.*, 5.—A travelling note having been filed, a copy thereof shall be served on the defendant against whom the same was filed.

6. *Ibid.*, 6.—The filing of a traversing note, and due service of a copy thereof, shall have the same effect as if the defendant against whom such note is filed had filed a full answer, or further answer, traversing the whole information, or those parts of it to which the note relates, on the day on which the note was filed.

7. A defendant, after service of the copy of the traversing note filed against him as aforesaid, shall not plead, answer, or demur to the information, or put in any further answer thereto, without the special leave of the court or a judge, and the cause shall stand in the same situation as if such defendant had filed a full answer or further answer to the information on the day on which the note was filed.

RULE IX.

Replication and Joining Issue.

1. *Ibid.*, XVII, 2.—No subpoena to rejoin shall hereafter be issued, and only one replication shall be filed in each cause unless the court or a judge shall otherwise direct, and the replication shall be in the form set forth at the end of this rule, or as near thereto as circumstances admit, and upon the filing of such replication the cause shall be deemed to be completely at issue, and each defendant may without any rule or order proceed to verify his case by evidence, and the informant may in like manner proceed to verify his case by evidence, as soon as notice of the replication having been filed has been duly served on all the defendants who have filed an answer or plea, or against whom a traversing note has been filed, or who have not been required to answer and have not answered the information.

Form of Replication.

Between — informant and — defendant.

The informant hereby joins issue with the defendants [all the defendants who have answered or pleaded, or against whom a traversing note has been filed, or who have not been required to answer and have not answered the information], and will hear the cause on information and answer against the defendants [all the defendants against whom the cause is to be heard on information and answer], and on the order to take the information pro confesso against the defendants [all the defendants against whom the information is to be taken pro confesso.]

RULE X.

Evidence.

1. *Consolidated Chancery Orders, Sect. VIII, 15 & 16 Vict. c. 26, s. 28.*—The mode of examining witnesses now in force, and all the practice of the court in relation thereto so far as the same are inconsistent with these rules, shall, from and after the time appointed for these rules to come into operation, be abolished; provided always, that the court or a judge may, if it shall seem fit, order any particular witness or witnesses within the jurisdiction of the court, or any witness or witnesses out of the jurisdiction of the court, to be examined upon interrogatories in the mode now in force, or in such other mode as the court or a judge may direct; and that with respect to such witness or witnesses the practice of the court in relation to the examination of witnesses shall continue in force, save only so far as the same may be varied by any order of the court or a judge in reference to any particular case.

2. *Chancery Order, 5th Feb. 1861, Rule 3.*—The informant or any defendant may, at any time within fourteen days after issue has been joined in a cause, apply to a judge by a summons to be served on the opposite party for an order that the evidence as to any facts or issues (such facts and issues to be distinctly and concisely specified in the summons) may be taken *viva voce* at the hearing of the cause, and the judge may, if he shall so think fit, make an order that the evidence as to such facts and issues, or any of them, shall be taken *viva voce* at the hearing accordingly; and the facts and issues as to which any such orders shall direct that the evidence shall be taken *viva voce* at the hearing shall be distinctly and concisely specified in such order. And where any such order shall have been made, the examination in chief, as well as the cross-examination and re-examination, shall be taken before the court at the hearing as to the facts and issues specified in such order; and no affidavit shall be admissible at the hearing in respect of any fact or issue which shall be included in any such order as aforesaid.

3. Except as to facts or issues included in any order directing evidence to be taken *viva voce* at the hearing under the 1st clause of this rule, each party shall be at liberty to verify his case by affidavit.

4. A judge may, if he think fit, upon the application of either party, by summons served on the opposite party, order that any particular witness or witnesses shall be examined orally before an examiner specially appointed by the judge for that purpose, whether the evidence of such witness or witnesses relate to any facts and issues specified in an order under the 2nd clause of this rule, or not; and witnesses so examined shall be subject to cross-examination and re-examination; and such examination, cross-examination, and re-examination shall be conducted as nearly as may be in the mode now in use in courts of criminal law with respect to a witness about to go abroad, and not expected to be present at the trial of a cause, but subject to such directions as may be given by the judge in any particular case.

5. *Consolidated Chancery Order, 5th Feb., 1861, Rule 5; Exchequer Rules, 1860, 119.*—The evidence in chief on both sides in any cause taken before the hearing, to be used at the hearing (including the examination, cross-examination, and re-examination of any witness before a special examiner, under any such order as mentioned in the last preceding clause of this rule), shall be closed within eight weeks after issue joined, unless the time is enlarged by special order; and no evidence subsequently taken shall be admissible without special leave of the court or a judge.

6. *Consolidated Chancery Orders, XVIII, 1; and Exchequer Rules, 1860, 121.*—All affidavits made in a cause, whether for the purpose of being used at the hearing or otherwise, shall be taken and expressed in the first person of the deponent, and all affidavits shall be filed in the Queen's Remembrancer's office; and affidavits to be used at the hearing of a cause shall be so filed before the time of closing evidence.

7. *15 & 16 Vict. c. 86, s. 37.*—Every affidavit in a cause shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject.

8. *Consolidated Chancery Orders, XIX, 12.*—No affidavit filed before issue joined in any cause shall, without special leave of the court or a judge, be received at the hearing thereof, unless within one month after issue joined, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf.

9. *Chancery Orders, 5th Feb., 1861, Rule 19.*—Where any party has filed an affidavit intended to be used at the hearing of a cause, any opposite party desiring to cross-examine the witness who has made such affidavit may serve upon the party by whom such affidavit has been filed a notice in writing requiring the production of the witness for cross-examination before the court at the hearing; such notice to be served within fourteen days next after closing evidence; but a judge, on the application of the party filing such affidavit, by summons served on the opposite party, may, if the circumstances of the case in his opinion render it expedient, make an order giving the party filing such affidavit liberty to produce such witness for cross-examination at a time named in such order, before an examiner specially appointed by the judge, instead of at the hearing. Unless such witness is produced accordingly at the hearing, or, if such order as last aforesaid have been made, then at the time named in such order, such affidavit shall not be used as evidence without the leave of the court. The party producing such witness shall be entitled to demand the expenses thereof in the first instance from the party requiring

such production, but such expenses shall ultimately be borne as the court shall direct. The witness, when produced and cross-examined, shall be subject to oral re-examination on behalf of the party by whom his affidavit was filed.

10. *Chancery Orders, 5th Feb., 1861, Rule 20.*—Where any such notice as is mentioned in the last preceding clause is given, the party to whom it is given shall be entitled to compel the attendance of the witness for cross-examination, in the same way as he might compel the attendance of a witness to be examined on his behalf.

11. The attendance of a witness, whether before the court or a special examiner, may be compelled, either by an order of a judge, in the same manner as in courts of common law, or by a subpoena ad testificandum, or subpoena duces tecum, which may be in the form mentioned at the foot of this rule, with such variations as circumstances may require.

12. *15 & 16 Vict. c. 86, s. 34.*—When the examination or cross-examination of witnesses before a special examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted to him by the Queen's Remembrancer's office, to be there filed.

13. *Chancery Order, 5th Feb., 1861, Rule 22.*—Any party to a cause requiring the attendance of any person before the court for the purpose of being examined, shall give to the opposite party forty-eight hours' notice at least of his intention to examine such witness or person; such notice to contain the name and description of the person, unless the court or a judge shall in any case think fit to dispense with such notice.

14. *15 & 16 Vict. c. 86, s. 29.*—Upon the hearing of any cause, the court, if it shall see fit to do so, may require the production and oral examination before itself of any witness or party in the cause, and may direct the costs of and attending the production and examination of such witness or party to be paid in such manner as it may think fit.

15. *Ibid., 41.*—In cases where it shall be necessary for any party to go into evidence subsequently to the hearing of a cause, such evidence may be taken by affidavit, but subject to any special directions which may be given by the court or a judge in any particular case.

16. *Chancery Order, 6th March, 1860.*—Affidavits to be filed in the office of the Queen's Remembrancer, whether for the purpose of being used on an interlocutory application, or at the hearing of a cause, or otherwise, are to be written on foolscap paper book-wise: provided nevertheless, that the Queen's Remembrancer may receive and file affidavits written otherwise than as here directed, if in his opinion the circumstances of the case render such reception and filing desirable or necessary.

17. *15 & 16 Vict. c. 86, s. 59.*—Upon applications by motion to the court in any suit depending therein for an injunction, or to dissolve an injunction, the answer of the defendant shall, for the purpose of evidence on such motions, be regarded merely as an affidavit of the defendant, and affidavits may be received and read in opposition thereto.

Form of Subpoena referred to in Clause 11 of the preceding Rule.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To — greeting. We command you [and every of you], that, all excuses ceasing, you do personally be and appear before [our trusty and well-beloved the Barons of our Court of Exchequer at Westminster, at such times as the bearer hereof shall by notice in writing appoint], [or —, an examiner specially appointed for the examination of witnesses in our Exchequer, at such times and places as the

bearer hereof shall by notice in writing appoint], to testify the truth according to your knowledge in a certain cause depending in our said Court of Exchequer, wherein — is informant [and — plaintiff, or — and — and others are plaintiffs], and — and others, or another] is [or are] defendant [or defendants], on the part of the — [and that you then and there bring with you and produce —]; and hereof fail not at your peril.

Witness, &c.

RULE XI.

Setting Down for Hearing.

1. *Consolidated Chancery Orders, XXI, 1.*—Within eight weeks after the evidence has been closed, the informant is to set down the cause, and obtain and serve on the solicitor of the defendant, or upon the defendant if defending in person, a subpoena to hear judgment. If he does not, any defendant, after the expiration of such eight weeks, may set the cause down, and may obtain a subpoena to hear judgment, and serve the same on the solicitor of the informant, and on the other defendants, if any.

2. *Ibid., 5.*—A subpoena to hear judgment must be served at least ten days before the return thereof.

3. A subpoena to hear judgment shall be in the form next hereinafter set forth, with such variations as circumstances may require.

Subpoena to hear Judgment.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To — greeting. We command you [and every of you], that you appear before the Chancellor and Barons of our Exchequer at Westminster on the — day of —, or whenever thereafter a certain cause now depending in our Court of Exchequer at Westminster, wherein — is informant [and — plaintiff], and — is defendant [or are defendants], shall come on for hearing, then and there to receive and abide by such judgment and decree as shall then or thereafter be pronounced, upon pain of judgment being pronounced against you by default.

Witness —, at Westminster, the — day of —, in the year of our Lord 186—.

RULE XII.

Decrees, Rules, and Orders.

1. *Ibid., XXIII, 2.*—It shall not be necessary in drawing up any decree to recite any of the pleadings or any previous proceeding beyond the prayer of the information, but it shall be sufficient to refer thereto; save only that in cases involving special circumstances, as the court or a judge shall direct, or the Queen's Remembrancer shall in his discretion think fit, such short recitals may be inserted as may be necessary to shew the grounds on which the decree is granted.

2. *Rules of the 26th November, 1861.*—All rules at side bar, and orders on motion of course, shall bear date on the day they are drawn up.

3. *Rule of the 22nd June, 1860.*—All rules upon the sheriffs of London or Middlesex to return writs shall be four-day rules, and upon other sheriffs eight-day rules.

4. *Rule 114.*—The writ heretofore used calling upon a party to perform a rule, order, or decree, shall not be necessary or used to bring such party into contempt, but the serving of a copy of the rule, or the copy of an office copy of such rule, order, or decree, shall be deemed sufficient service.

5. *Rule 113.*—It shall not, except in the cases of attachment, be necessary to the regular service of a rule, order, or decree, that the original or office copy thereof should be shewn, unless sight thereof be demanded.

RULE XIII.

Revivor and Supplement.

1. Where an order under the Crown Suits, &c. Act, 1865, to the effect of an order to revive, or of a supplemental decree, has been obtained, the first seven clauses of the second of these rules shall be applicable in the same manner as if such order were an information filed on the day on which such order is obtained, and to which the persons who would be defendants to an information of revivor or supplemental information were defendants.

2. *Ibid.*, XXXII, 1.—Any person under no disability, or under the disability of coverture only, who may be served with any such order as mentioned in the last preceding clause, may apply to the court or a judge to discharge such order within twelve days after such service.

3. *Ibid.*—Any person under any disability other than coverture, who may be served with any such order as last aforesaid may apply to the court or a judge to discharge such order within twelve days after the appointment of a guardian or guardianship ad litem for such person, and until such period of twelve days shall have expired, such order shall be of no effect as against such person.

4. *Ibid.*, XXXII, 2.—Where the informant in any cause which is not in such a state as to allow of an amendment being made in the information, desires to state or put in issue any facts or circumstances which may have occurred after the institution of the suit, he may state the same, and put the same in issue, by filing in the Queen's Remembrancer's office a statement, either written or printed, to be annexed to the information, and such proceedings by way of answer, evidence, and otherwise, shall be had and taken upon the statement so filed as if the same were embodied in a supplemental information.

RULE XIV.

Written Pleadings, &c.

Chancery Order, 6th March, 1860.—Pleas, demurrers, interrogatories, traversing notes, replications, supplemental statements, exceptions, and certificates, to be filed in the office of the Queen's Remembrancer, are to be written on paper of the same description and size as that on which informations are printed.

RULE XV.

Computations of Time.

1. *Revenue Side, Rule 61.*—In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the court, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

2. *Rule 62.*—Christmas-day, and the three following days, and the days between the Thursday next before and the Wednesday next after Easter-day, shall not be reckoned or included in the time allowed for any proceeding.

3. The period from the 10th day of August to the 24th day of October (both inclusive) shall be excluded in reckoning the time allowed for pleading, answering, or demurring to an information, and for filing exceptions to answers.

RULE XVI.

Payment of Money into Court.

1. *Exchequer Rules of 1860, 132, 133, 134.*—Any party directed by any decree or order of the court or a judge to pay money into court, must apply at the office of the Queen's Remembrancer for a "direction" so to do, which direction must be taken to the Bank of England, and the money there paid in. After payment

the receipt obtained from the Bank of England must be filed at the Queen's Remembrancer's office.

2. If the money is to be invested, paid out, or otherwise disposed of, an order of the court or a judge must be obtained for that purpose, upon notice to the opposite party.

3. The orders relating to the matters mentioned in this rule are to be drawn up in the Queen's Remembrancer's office.

RULE XVII.

Recognisances.

1. *Exchequer Rules of 1860, 68, 71, 72.*—All recognisances, if taken and acknowledged in town, are to be taken and acknowledged before a judge; and if a recognisance be taken and acknowledged in the country, the same may be taken and acknowledged before a commissioner for taking special bail in the Exchequer, and in the latter case an affidavit of caption must be made and filed.

2. No enrolment of any recognisances shall be necessary, but the same shall be filed in the Queen's Remembrancer's office.

3. All recognisances are to be prepared on parchment by the respective parties entering into the same.

RULE XVIII.

Issuing Writs.

1. *Rules of Revenue Side, 1860.*—All writs in suits shall be prepared by the solicitor of the department, or by the solicitor suing out the same, and the name of the solicitor of the department, together with the name of the department, or the name and address of such other solicitor, shall be indorsed on such writ; and every such writ shall, before the issuing thereof, be sealed at the Queen's Remembrancer's office, and a præcipe thereof left at the said office; and thereupon an entry of every such writ, together with the date of sealing, and the name of the solicitor suing out the same, shall be made in a book to be kept at the Queen's Remembrancer's office for that purpose; and all such writs shall be tested of the day, month, and year when issued, and conclude without any other words.

RULE XIX.

Distringas.

A writ of distringas on behalf of her Majesty's Attorney-General, or of the Attorney-General of the Prince of Wales and Duke of Cornwall, to restrain the transfer of stock transferable at the Bank of England, or the payment of the dividends thereon, shall continue to be issuable from the office of the Queen's Remembrancer in the form heretofore made, but concluding with the date of the day, month, and year of issue only.

RULE XX.

Power of Court as to Time.

1. Any power which the court or a judge may now possess to enlarge or abridge the time for doing any act or taking any proceeding, upon such (if any) terms as the justice of the case may require, shall not be affected by these orders.

RULE XXI.

Costs.

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the schedule hereto, unless the court shall make order to the contrary as to all or any of the parties.

2. *Exchequer Rules of 1860, 81, 82, 86.*—Where costs are to be taxed, one day's notice of taxing costs, together with a copy of the bill of costs, shall be given to the solicitor of the party whose costs are to be taxed, by the other party or his solicitor.

3. Where costs are directed to be paid to the Crown, a certificate shall be granted by the Queen's Remembrancer of the costs allowed, and on default of pay-

ment the solicitor of the department may sue out a subpoena for the payment of such costs; and on an affidavit of service thereof, and demand made, and non-payment, an attachment may be granted.

4. A subpoena for costs shall be in the form set forth at the foot of this rule, with such variations as circumstances may require.

Subpoena for Costs.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To — greeting. We command you [and every of you], that you pay, or cause to be paid, immediately after the service of this writ, to —, or the bearer of these presents, £—, costs in a cause, wherein — is informant [and — plaintiff] and — [and another or others] is defendant [or are defendants], by our Court of Exchequer adjudged to be paid by you, the said —, under pain of an attachment issuing against your person, and such process for contempt as the said court shall award in default of such payment.

Witness, &c.

RULE XXII.

Appointments.

22nd June, 1860, Rule 139.—On every appointment made by the Queen's Remembrancer, the party on whom the same shall be served shall attend without waiting for a second appointment, or in default thereof the Queen's Remembrancer may proceed ex parte on the first appointment.

RULE XXIII.

Commencement of Rules.

1. These rules shall take effect and come into operation on the 16th April, 1866, but nothing therein contained shall apply to any suit commenced by information filed before that day, unless the court or a judge shall, on hearing the parties, so direct.

RULE XXIV.

Interpretation.

1. In the preceding rules the following words (that is to say), "the court," "information," "suit," and "cause," have the meanings mentioned in the Crown Suits, &c. Act, 1865, sect. 6; and the term "a judge" means any judge of one of her Majesty's superior courts of law at Westminster transacting business out of court.

2. In the preceding rules the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction (that is to say):

- (1). Words importing the singular number include the plural number, and words importing the plural number include the singular number.
- (2). Words including the masculine gender include females.
- (3). The word "party" or "parties" includes a body politic or corporate, and also includes her Majesty's Attorney-General, or the Attorney-General of the Prince of Wales and Duke of Cornwall, as the case may require.
- (4). The word "affidavit" includes affirmation.

FRED. POLLOCK.

G. BRAMWELL.

SAMUEL MARTIN.

W. F. CHANNELL.

G. PIGOTT.

March 14, 1866.

SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

Instructions. £ s. d.

For special cases, answers, examinations, demurrers, pleas, and exceptions	0	13	4
For informations	2	2	0

For amended or supplemental information	£0	13	4
For brief for moving injunction	1	1	0
For interrogatories for examination of parties or witnesses	0	13	4
For special petitions	0	13	4
For special affidavits	0	6	8
For brief in suit by information on cause coming on for hearing on service of subpoena to hear judgment	1	1	0
To defend proceedings commenced by information	0	13	4
For instructions for order to revive or add parties	0	13	4

As to informations and answers, affidavits and petitions, in lieu of the fixed fees for instructions for and for drawing, the Queen's Remembrancer is to be at liberty to take into his consideration, the special circumstances of each case, and at his discretion to make such further allowance as shall appear to him to be just.

The Preparation of Pleadings and other Documents.

(The folio to be seventy-two words, and the sheet ten folios).

For drawing informations, answers, pleas, demurrers, exceptions, interrogatories, and affidavits, per folio	0	1	0
For engrossing, per folio	0	0	4
For drawing statements and other documents for the judges' chambers or Queen's Remembrancer, when required, including the fair copy thereof to leave in chambers, per folio	0	1	0
For examining and correcting the proof of an information or answer, per folio	0	0	2
For revising the print of an answer before swearing or filing, per folio	0	0	2
For drawing special notice of motion	0	5	0
Or, per folio	0	1	0
For drawing such observations for counsel to accompany brief as may be necessary and proper, per sheet	0	6	8
For drawing the brief on further consideration, per sheet	0	6	8
For preparing and filing replication	0	10	0
For drawing statement on which counsel to move for order to revive or add parties, and copy	0	10	0
Or, according to circumstances, at per sheet	0	8	8
For drawing petition to revive, at per folio	0	1	0
For drawing and copying certificate to appoint guardians ad litem	0	6	8
For amending each copy of an information to serve where no reprint	0	13	4
For amending each brief information where no reprint	0	13	4
For drawing bills of costs, including the copy for the Queen's Remembrancer's office, per folio	0	0	8
The fee for drawing a document in all cases includes a copy, if required, for the use of the solicitor or client, or for the settlement of counsel.			

Perusal.

For perusing the print of an information by the defendant's solicitors	1	1	0
If exceeding sixty folios, at per folio	0	0	4
For perusing the print of an amended information	0	13	4
If amendments exceeded forty folios, at per folio	0	0	4
For perusing an amended information when amended in writing	0	6	8
If amendments exceeding twenty folios, at per folio	0	0	4
The solicitor of the party answering interrogatories, for perusing interrogatories	0	13	4
If exceeding forty folios, at per folio	0	0	4
For perusing an answer	0	13	4
If exceeding forty folios, at per folio	0	0	4
For perusing an examination, at per folio	0	0	4
For perusing all special affidavits filed by an opposing party, at per folio	0	0	4
For perusing copy supplemental statement under Crown Suits Act	0	13	4
For perusing copy order to revive	0	13	4

Copies.

Subject to the foregoing regulations as to charges for copies, copies of all documents are to be at the rate of per folio	0	0	4
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Or per sheet of 10 folios, at	£0 3 4
Having regard to the preceding fees for perusal, the fee for abbreviating is to cease; and no close copies are now to be allowed as of course, but the allowance is to depend on the propriety of making the copy, which in each case is to be shewn and considered.	
For each copy of a summons to serve	0 2 0
For each copy of a notice of motion, order, or certificate to serve	0 1 0
Or at per folio	0 0 4
<i>Attendances.</i>	
For attending on the Queen's Remembrancer's warrant	0 6 8
Or according to the circumstances, not to exceed per diem	2 2 0
For attending each counsel with his brief, case, or abstract, in a suit or other proceeding in this court	0 6 8
For the like, where the fee amounts to five guineas	0 13 4
Where it amounts to twenty guineas	1 1 0
Where it amounts to forty guineas or upwards	2 2 0
For attending to present special petition, and for same answered	0 6 8
For attending on counsel and court on motion of course, and for order	0 13 4
For attending on the day in which a cause or petition stands appointed for hearing, or for which notice of motion has been given	0 10 0
For attending when heard	1 1 0
Or according to circumstances, not to exceed per diem	2 2 0
For attending the court on every special motion, when made	0 13 4
Or according to circumstances, not to exceed	1 1 0
For attending on motion for or to discharge order for injunction or other matter when heard, per diem	0 13 4
Or according to circumstances, not to exceed	1 1 0
For attending to get answer or special affidavit sworn	0 6 8
For attending examiner to procure appointment to examine witnesses	0 6 8
For attending the examination of witnesses before examiner	0 13 4
Or according to circumstances, not to exceed per diem	2 2 0
But if without counsel, the fee may, at the Queen's Remembrancer's discretion, be increased to	3 3 0
For attending to settle, and afterwards to read over, the engrossment of an answer or examination	0 13 4
If the same exceed twenty folios, and under fifty folios	1 1 0
And for each additional thirty folios	0 6 8
For attending to insert an advertisement in Gazette	0 6 8
For entering caveat with the Queen's Remembrancer	0 6 8
For attending to procure certificate of a caveat	0 6 8
For attending Queen's Remembrancer to certify abatement or settlement of suit, and to have same so marked in the cause book	0 6 8
For attending the printer with an information or answer to be printed	0 6 8
For attending to get copies of information or interrogatories marked for service	0 6 8
For attending to take instructions to appear, and to enter the appearance of one or more defendants, not exceeding three	0 6 8
If exceeding three, for every additional number not exceeding three	0 6 8
The solicitor of the party filing an answer, for his attendance on the Queen's Remembrancer with and for the written and printed copies of an answer, and for certifying	0 13 4
For the informant, or party having the conduct of the order, attending the Queen's Remembrancer with briefs and papers, to bespeak minutes or order, not being in order of course	0 6 8
For ditto, for preparing list of evidence read, but only when required by the Queen's Remembrancer, and certified by him	0 6 8

Or according to length, at per folio	£0 1 0
Attending to settle the draft of any decree or order	0 13 4
Or, at the Queen's Remembrancer's discretion, not to exceed	2 2 0
In case the Queen's Remembrancer shall certify that a special allowance ought to be made in respect of any unusual difficulty in settling an order, he is to consider the same, and make such allowance to all or any of the parties as to him shall seem just.	
For attending to procure certificate of pleading	0 6 8
For attending to give consent to take answer without oath, and for other necessary or proper consent, of a like nature	0 6 8
For attending to procure such consents	0 6 8
For attendances in consultation or in conference with counsel	0 13 4
For attending court on appointment of a guardian ad litem	0 13 4
<i>Writs.</i>	
For every writ of subpoena duces tecum	0 6 8
For a writ or writs of subpoena other than subpoena duces tecum, if the number of names therein shall not exceed three	0 6 8
If exceeding three names, for every additional number not exceeding three	0 6 8
For preparing every other writing without order	0 6 8
For every writ under order, except special injunction	0 13 4
For special injunction, including engrossment	1 0 0
Or, per folio	0 1 4

<i>Notices and Services.</i>	
For service of a notice of motion, exclusive of copy	0 2 6
For notice to a solicitor of appearance, answer, demurrer, plea, amendment, and replication	0 2 6
For notice of filing affidavits or set of affidavits filed, or which ought properly to have been filed together, to be read in court	0 2 6
For notice of appointment or copy warrant for settling and passing decrees or orders before the Queen's Remembrancer	
For copy and service of a warrant on a solicitor	0 2 6
For service of a judge's summons, exclusive of the copy	0 2 6
For service of a petition	0 2 6
For judge's summons, copy, and service	0 5 0
For service of an order, exclusive of the copy	0 2 6
For other necessary or proper notice	0 2 6
For services on a party or witness such reasonable charges and expenses as may be properly incurred, according to distance, or by the employment of an agent	

<i>Oaths and Exhibits.</i>	
To the commissioner for oath in London, according to statute	0 1 6
In the country	0 2 6
To the solicitor, for preparing each exhibit in town and country	0 1 0
The commissioner, for making each exhibit	0 1 0

<i>Term Fee.</i>	
For a term fee, in all causes, for every term in which a proceeding by the party shall take place	0 10 0
And for letters, per term	0 5 0
In country agency causes, the further fee for letters of	0 6 8
Where no proceeding is taken which carries a term fee, a charge for letters may be allowed, if the circumstances shall require it.	
For any work or labour properly performed, and not herein provided for, such allowances are to be made as heretofore.	

The Jurist

No. 593, NEW SERIES.—Vol. XII.
No. 1532, OLD SERIES.—Vol. XXX.

MAY 19, 1866.

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May 16, 1866.

GRAY'S-INN.—The **READER** of the Honourable Society of Gray's Inn on the **LAW of REAL PROPERTY** having signified his intention of resigning at the close of the present Trinity Educational Term, the Masters of the Bench request that Barristers desirous of becoming **CANDIDATES** for the Office will communicate their desire to that effect to the Treasurer of the Society, at the Steward's Office, South-square, on or before the 9th day of **JUNE** next.

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By W. ERNST BROWNING, Barrister at Law.

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N O T I C E.

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THE JURIST.

LONDON, MAY 19, 1866.

THE main alterations in the principles and administration of the law of bankruptcy and insolvency which are contemplated by the Attorney-General's bill, are—1. Wholly to abolish imprisonment for debt, except in cases where a county court, in the exercise of the authority given him by the acts 8 & 9 Vict. c. 127, and the 9 & 10 Vict. c. 95, expressly orders a debtor, who having ability to pay, refuses to do so. There is another exception of arrest under the express order of a judge, referring to the stat. 7 & 8 Vict. c. 90, we presume in mistake for the 1 & 2 Vict. c. 110, which enables a judge to order the arrest of a debtor about to leave the kingdom. 2. To discharge a debtor from his liabilities if he has conformed to the regulations of the act, and has not been prosecuted for any offence under the act, or if prosecuted has been acquitted; the discharge to be immediate, if his assets are sufficient to pay a dividend of 6s. 8d. in the pound, but otherwise to be deferred for six years. 3. To abolish the official management and supervision of bankrupts' estates, leaving the creditors to appoint their own trustees and inspectors, who are to be subject only to the duty of making annual returns to an official comptroller, and to be liable to the supervision of the Court; and 4, to provide for the ultimate abolition of the Bankruptcy Court, transferring the jurisdiction to the Court of Chancery.

The abolition of imprisonment for debt was in substance effected by Lord Westbury's Act of 1861—in a characteristically clumsy manner—judgment creditors being allowed, on the one hand, to lodge their debtors in prison, and an officer of the Court of Bankruptcy being bound, on the other, to visit and release them. It is not likely that many voices will be raised for a return to the old system. To imprison, or reserve the right of imprisoning, all insolvent debtors for the sake of punishing some who deserve punishment, is a rude and inefficient substitute for a discriminating code of mercantile criminal law. It was grossly unjust and inexpedient that the punishment and obloquy due to reckless and fraudulent debtors should be diluted and meted out to the guilty and the innocent indifferently. But it was not necessary, in order to remedy this anomaly, that the bankruptcy and the insolvency laws should be confounded into one inharmonious whole, as was done by the unlucky act of 1861. Provisions devised for the relief of insolvent prisoners should have been wholly discarded as soon as it was determined that there should be no more imprisonment on the mere ground of insolvency. But the present bill appears to go too far in the opposite direction, by providing that in no case shall a debtor be allowed to petition for an adjudication of bankruptcy against himself. The first objection to this provision is that it is nugatory, because a friendly petitioning creditor can always be had. This would not be a sufficient objection if the prohibition were right in principle; but it is obvious, that as the object

of bankruptcy is a rateable division of the debtor's assets among his creditors, the debtor himself is the person who ought to initiate that division as soon as he knows that it is expedient; and he is the person who must first be aware of its expediency. So long, therefore, as it is in the power of individual creditors to obtain a preference by legal process before bankruptcy, it seems that it ought to be in the power of the debtor to protect and preserve his estate for the equal benefit of all his creditors, by a *cessio bonorum*, and therefore, that the rule which existed before the act of 1861, that a debtor having available assets might make himself a bankrupt, should be restored.

The proposal to suspend for six years the discharge of a bankrupt who has not paid 6s. 8d. in the pound will be vehemently opposed by mercantile men. The provision is intended as a substitute for the discretionary power of the Court to postpone the bankrupt's discharge, but, like imprisonment, it is a very rude expedient, adopted, as it seems, because the framer of the measure had a well-founded distrust of the discretion of commissioners in bankruptcy, and no confidence in the fairness, discretion, or firmness of creditors. But there is no possible explanation of the object and policy of the provision by which it can be justified. It must be intended either for the benefit of the creditors, or for the punishment of the debtor. But the creditors are entitled to be paid 20s. in the pound, sooner or later, if it can be paid, and, whether they have or have not received dividends to the amount of 6s. 8d., may surely be trusted to decide whether it is best for their own interests that the debtor should be discharged at an early or a remote period. If the suspension of the debtor's discharge is to be exemplary or punitive, it cannot be seriously contended that the degree of his criminality varies in an inverse ratio to the dividend he pays, or that blameable and blameless debtors are grouped on the opposite sides of a dividend of 6s. 8d. The true principle is that which was clearly and forcibly expounded by the Attorney-General in his able speech—to leave to the creditors the right and duty of deciding what is best to be done for their own interests, and of invoking the aid of authority only for the purpose of enforcing their rights, or of punishing offenders; which punishment is to be provided for by defining mercantile offences strictly, and placing them under the jurisdiction of the ordinary courts.

The collection, management, and disposition of the bankrupt's estate is to be conducted solely by trustees, who are assignees under another name, elected by the creditors, but not necessarily from the body of the creditors. They are to give security, and to make annual returns to the court. Their conduct will be subject to the supervision of inspectors, each of whom must either be a creditor, or hold a proxy for a creditor, entitling him to represent and vote for that creditor. The inspectors are to have a general right to supervise and assist in the proceedings of the trustees, but no right of control, except with respect to references to arbitration and the payment of dividends.

The only official person concerned in the manage-

ment of the estate will be the comptroller in bankruptcy. It will be his duty to keep a register of bankruptcies; to superintend the annual accounts and returns which trustees, whether in bankruptcy or under deeds of arrangement, are required to make in a prescribed form; to inquire into the conduct of the trustees in all cases where, by reason of information officially acquired, or on the complaint of any creditor, there may appear to be reason for inquiry, and, if necessary, to report the result of such inquiry to the court. On the whole, it seems likely that the arrangement will work well, but much will depend upon the selection of the comptroller. Trustees chosen by the creditors will be selected and remunerated with special reference to the peculiarities of the estate to be dealt with, and as they need not be creditors, it may fairly be expected that their work will in most cases be more efficient and economical than that of official assignees.

The arrangement clauses of the act of 1861 are repeated, with the following variations:—The debts are to be computed and proved as they would have been computed and proved for the purpose of drawing dividends in the case of bankruptcy, for which purpose the trustees under the deed are to exercise the powers of the trustee in bankruptcy—a provision leaving it doubtful whether there can be a valid deed of arrangement without a trustee; and, if so, how the proof in such case is to be made; for it is further provided, that the written assent or approval of the creditors, together with their declarations tendered in proof, shall be delivered to the registrar along with the affidavit or certificate of the execution of the deed by the required majority.

The *advallörem* stamp duty on deeds of arrangement not intended to bind a dissenting minority is abolished.

A creditor, whether party to a deed of arrangement or not, may obtain a decision of the Court as to its validity; but it does not appear that such decision will bind any other party.

A deed of arrangement will not bind a dissenting minority, unless it comprises the debtor's *whole property*, real and personal, and the creditors receive at least 6s. 8d. in the pound. Deeds of composition will, therefore, be again excluded; and no provision for an allowance to the debtor, or for the reservation of his wearing apparel, &c., can be admitted.

No provision is made for the case of a partnership, where an arrangement is sought to be made between a partner and his separate creditors only, or between the partners and their joint creditors only.

Among the alterations in matters of detail is one which ought never to have been required—a distinct provision that the voting power of a creditor holding security shall be proportionate only to the excess of his debt over the value of the security.

The bill is respectably drawn, but is very far from perfection, and will require very careful revision. It would be well if Mr. Freshfield's suggestion were adopted, of appointing a committee of three or five persons, to whom all bills of that character should be referred before they are read a third time.

THE ISSUE OF BANK NOTES.

THE act of the 7 & 8 Vict. c. 32, commonly called the Bank Charter Act, is very short; and the 2nd and 5th sections, which contain the enactments of present interest, are singularly brief and business-like. After requiring, by the 1st section, that the business relating to the issue of bank notes shall be kept wholly distinct from the general banking business of the Bank of England, and be carried on in a separate department, to be called "the issue department of the Bank of England," it is by the 2nd section enacted, "that upon the 31st August, 1844, there shall be transferred, appropriated, and set apart by the said governor and company to the issue department of the Bank of England securities to the value of 14,000,000*l.*, whereof the debt due by the public to the said governor and company shall be, and be deemed, a part. And there shall at the same time be transferred, appropriated, and set apart to the said issue department so much of the gold coin and gold and silver bullion then held by the Bank of England as shall not be required by the banking department thereof; and thereupon there shall be delivered out of the said issue department into the said banking department of the Bank of England such an amount of Bank of England notes as, together with the Bank of England notes then in circulation, shall be equal to the aggregate amount of the securities, coin, and bullion so transferred to the said issue department of the Bank of England. And the whole amount of Bank of England notes then in circulation, including those delivered to the banking department of the Bank of England as aforesaid, shall be deemed to be issued on the credit of such securities, coin, and bullion so appropriated and set apart to the said issue department. And from thenceforth it shall not be lawful for the said governor and company to increase the amount of the *securities* for the time being in the said issue department, save as hereinafter is mentioned (see sect. 5); but it shall be lawful for the said governor and company to diminish the amount of such securities, and again to increase the same to any sum not exceeding in the whole the sum of 14,000,000*l.*, and so from time to time as they shall see occasion. And from and after such transfer and appropriation to the said issue department as aforesaid, it shall not be lawful for the said governor and company to issue Bank of England notes either into the banking department of the Bank of England or to any person or persons whatsoever, save in exchange for Bank of England notes, or for gold coin, or for gold or silver bullion received or purchased for the said issue department under the provisions of this act, or in exchange for securities acquired and taken in the said issue department under the provisions hereinbefore contained. Provided always, that it shall be lawful for the said governor and company in their banking department to issue all such Bank of England notes as they shall at any time receive from the said issue department, or otherwise, in the same manner in all respects as such issue could be lawful to any other person or persons."

It will be observed that the enactment is defective in point of expression, by omitting to require that no securities deposited against notes shall be taken out except in exchange for notes withdrawn from circulation, and cancelled; but the meaning is abundantly clear.

Sect. 3 limits the amount of silver allowed to be deposited under the previous section to one-fourth part of the gold held at the same time.

Sect. 4 entitles all persons to demand from the issue department notes in exchange for gold bullion at the rate of 3*l.* 17*s.* 9*d.* per ounce of standard gold.

Sect. 5 enables the Queen in Council, on the giving up of the issue of notes by any private banks, to empower the Bank of England to increase the amount of deposited securities and equivalent issue of notes beyond 14,000,000*l.*, to an extent to be specified, not exceeding two-thirds of the amount of notes which such private banks was authorised to issue.

By sect. 9, the profits made by such increased issue are to be allowed to the public.

Sect. 10 prohibits the establishment of any new private bank of issue, and subsequent sections regulate the exercise of their privileges by existing banks of issue.

So much of the Bank of England notes in circulation as represent the Bank reserve of coin and bullion may be regarded as metallic currency in a more convenient form. The remainder is the amount of the current discounts of the Bank of England to itself on securities. The banking department of the Bank of England discounts the securities which it accepts beyond the amount of its own resources, by rediscounting with the issue department, under the authority of the Bank Charter Act, and the bank notes upon such discounts form an addition to the circulation of the same character as bills of lading, dock warrants, bills, notes, and other negotiable securities. When the money market is not disturbed by alarm, the ordinary negotiable securities, with the Bank of England notes and coin, form the circulating medium of the country. When, by the effects of a panic, mercantile and other securities become to a great extent unavailable as currency, the interference of the Government, by authorising an extension of the issue of notes, operates as a sedative upon the mercantile imagination, just as the calling in of the doctor composes the mind of the invalid; and the operation of the Bank under such authority relieve the distress, by substituting negotiable bank notes for securities, which, though good, are for the time being unavailable.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

EASTER TERM, 1866.

FINAL EXAMINATION.

At the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

1. Arthur Alliot Wells, LL.B., who served his clerkship to Mr. Arthur Wells, of Nottingham.

1. John Wesley Woolsey, who served his clerkship to Messrs. Nowell & Priestley, of Barton-upon-Humber.

2. Edmund John Thomas Judge Mourilyan, who served his clerkship to Messrs. Boys & Twedies, of London.

2. Richardson Peele, who served his clerkship to Messrs. Thompson & Lisle, of Durham; and Mr. James Crosby, of London.

3. John Cullimore, who served his clerkship to Messrs. Crossman, Crossman, & Lloyd, of Thornbury; and Messrs. Meredith, Lucas, & Meredith, of Lincoln's Inn.

3. George Stephenson Lawson, who served his clerkship to Mr. John Robinson, of Sunderland; and Mr. Thomas Henry Dixon, of London.

3. Walter Edward Moore, who served his clerkship to Messrs. Richardson & Turner, of Leeds; and Messrs. Langford & Marsden, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—

To Mr. Wells, the prize of the Honourable Society of Clifford's Inn; to Mr. Woolsey, one of the prizes of the Incorporated Law Society; to Mr. Mourilyan, one of the prizes of the Incorporated Law Society; to Mr. Peele, one of the prizes of the Incorporated Law Society; to Mr. Cullimore, one of the prizes of the Incorporated Law Society; to Mr. Lawson, one of the prizes of the Incorporated Law Society; and to Mr. Moore, one of the prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

John Croft Deverell, B.A., who served his clerkship to Messrs. Ridsdale & Craddock, of London; and Messrs. Walters, Young, and Walters, of London.

James Kershaw, who served his clerkship to Messrs. Darbishire & Ashworth, of Manchester; and Messrs. Cunliffe & Beaumont, of London.

Louis Philip Vincent, who served his clerkship to Messrs. Chilton, Burton, Yeates, & Hart, of London.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidate, that his answers to the questions at the examination were highly satisfactory, and would have entitled him to a prize if he had not been above the age of twenty-six:—

Harry Samuel Williams, M.A.

The number of candidates examined in this term was 88; of these 78 were passed, and 10 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Imperial Parliament.

HOUSE OF COMMONS.—*Thursday, May 10.*

BANKRUPTCY LAW.

Mr. J. S. Mill gave notice that, on going into committee on the Bankruptcy Bill, he should move that it be an instruction to the committee to insert clauses for the punishment of dishonest bankrupts.

FIRE INSURANCE.

Mr. H. B. Sheridan gave notice that, on the second reading of the Terminable Annuities Bill, he should propose a resolution in favour of a further reduction of the duty on fire insurance.

BANKRUPTCY LAW AMENDMENT BILL.

On the order of the day for the second reading of the bill, *The Attorney-General* said, the present measure was intended to form a complete code of the law relating to bankruptcy. The bankruptcy law of this country dated as far back as the reign of Henry VIII, and from that time until the reign of Queen Anne, in 1705, it proceeded upon the principles that bankruptcy was *prima facie* criminal and fraudulent. The severity of that code was well illustrated by a clause in an act of James I, which provided, that if a bankrupt could not prove to the satisfaction of the commissioners that his debts had been contracted through unavoidable losses or misfortunes, he should be put in the pillory, and have his ears cut off. In the year 1705 the first of a series of temporary acts was introduced, and these acts continued up to 1798, when their provisions were made permanent. The object of those acts was the prevention of frauds by bankrupts, and they introduced for the first time the principle of discharging the bankrupt in due form of law if no case of fraud could be shewn against him. In 1855 a consolidation of the law was effected, and some very important changes were introduced,

but the measure had some defects, and was repealed in the following year, when another consolidation took place. The most important principle introduced into that act was, that the practice of a bankrupt obtaining his discharge by the signatures of his creditors was departed from. In 1831 the Court of Bankruptcy was established, and the system was then introduced of appointing creditors' and official assignees, but the system gave rise to certain abuses for want of efficient supervision. In 1849 a Consolidation Act was passed, which made some important changes in the law. Before alluding to the act of 1861, he might remind the House that legislation had likewise been going on with respect to a kindred subject—the subject of insolvency. The principle of these several acts was to declare that non-trader debtors should henceforward be exempted from imprisonment, their future estate, however, still remaining liable for the liquidation of their debts. The first great distinction introduced by the act of 1861 was to make all debtors, whether traders or non-traders, equally liable to be made bankrupt. No doubt the abolition of the distinction between the two classes was a great improvement in the law; but, looking to the operation of the act of 1861 as a whole, it must be admitted that it did not succeed in rendering the administration of bankruptcy law more popular with the mercantile community. Next came the committee of 1864, moved for by his hon. friend the member for Southampton (Mr. Moffatt). The recommendations of the committee involved several important matters, and the object of this bill was to carry them almost entirely into effect. The first of them was, that the whole bankruptcy law, from 1826 downwards should be consolidated, and that it was proposed to do. The next recommendation was, that imprisonment for debt should be abolished. Certainly, the value of the power of imprisonment was not what it might have been in past times, for as the law enabled a man to make himself a bankrupt whenever he pleased, that at once nullified the effect of imprisonment for debt. Indeed, the act of 1861 contained a provision that the prisons should be periodically visited, and that debtors should be made bankrupt whether they liked it or not. Moreover, it was no new recommendation that the power of imprisonment for debt should be abolished; the recommendation had been made upon various preceding occasions. The Government proposed the change upon grounds of principle and expediency. Certainly, if creditors had a remedy against a man's property, it did seem barbarous that they should also have a remedy against his person. In the next place, the bill proposed that only creditors should have the power of putting the bankruptcy law in motion; and that from the time final imprisonment shall be abolished, no debtor should have the power of making himself a bankrupt. He would like to make a few observations with regard to the discharge to be granted to the bankrupt. Many people were of opinion that there should be no discharge; but he could not adopt that conclusion. The general opinion of the community, and the laws and practice of other countries were in favour of a discharge. It was quite true that this was not the general law of Europe. But in some States powers were given to creditors to make compositions, which really, in effect, amounted to the same thing, because they had the effect of putting an end to bankruptcy. He was informed, on good authority, that the working of the bankruptcy law in Scotland tended to prove that the interest of the creditors would not suffer by the granting of a discharge. He proposed that the House should adopt the advice of the committee, and fix certain terms upon which the discharge should be granted. The law as it at present stood might be said to be half criminal and half insolvent. It proceeded upon the notion that the court of bankruptcy should investigate all the previous proceedings of a man's life, including his moral conduct, the amount of money he had spent, and his manner and style of living. This had led to a greater amount of dissatisfaction than anything else connected with the law, excepting, perhaps, the expense of administering the statute. He did not think it was advisable that such latitude should be continued. They should undoubtedly omit nothing likely to help them in detecting fraud or crime; and where it had been committed they should not hesitate about punishing it; but this might be done without being unjust. When such fraud was detected, it would be a good reason for withholding a discharge in bankruptcy; but they should not impose upon their tribunals the arbitrary power of saying that crime existed

merely on account of certain antecedent circumstances connected with a man's life who might happen to become bankrupt. The committee recommended that the discharge in bankruptcy should be upon the footing of a compensation by law—that a not inconsiderable dividend should be made a condition, in conjunction with the absence of criminality, of entitling a person to a discharge. He must make a single remark upon the subject of the dividend which they proposed. They had taken 6s. 8d. per pound as a sum adequate, on the whole, for the purpose which the law had in view. In fixing it at this they had not been without precedent in former legislation on this matter. The ordering of goods without the intention of paying for them, in order to swell the assets in bankruptcy, ought to be, and by this bill would be, made a criminal offence. The principle upon which the law formerly stood was, that of allowing creditors to manage their own affairs. Acting on this, the measures of 1849 and 1861 introduced trustees, deeds of arrangement, and deeds of composition, by which creditors might, if they chose, withdraw from the official assignees, and appoint inspectors of their own choosing. The practical working of these acts had been most interesting. Under the system thus brought into operation, the whole business of bankruptcy had been driven out of the courts, and had become subject to deeds of arrangement. By the returns up to October last, it appeared that there were 8305 petitions in bankruptcy in that year. Of these, 769 were the petitions of creditors, 5733 were the petitions of debtors, and 1000 by the registrars of prisons, the remainder arising in other ways. The total value of assets was 856,955*l*. The expenses of the court, the costs of solicitors, and some others which were the subject of the estimate, made on authority upon which he could rely, amounted to no less a sum than 373,000*l*. odd, being about three-sevenths of the whole amount, while the creditors got only 434,952*l*., being about 50 per cent. On the other hand, he would look at what had been done in the same period through the agency of trustees. Whilst the whole machinery of the courts of bankruptcy and the county courts divided less than 480,000*l*., at a cost of 370,000*l*., the gross value of assets dealt with by assignments, compositions, and inspectors had been upwards of 9,000,000*l*. [An honourable member here remarked that those were the statistics of six months.] Fortunately, this system was recommended by the experience of the definite procedure in Scotland since 1856, and from which there was not a single element of the law of bankruptcy absent, the facts themselves proving that if they would place bankruptcy on a right footing, they should assimilate the practice to that which was pursued by the mercantile world under deeds of arrangement. These deeds were themselves what bankruptcy ought to be. The mode, then, which they proposed to adopt in England was this:—The court was to have as little as possible to do in the matter. The parties might go to the sheriff or county court judge to take the first step, and they might be able to return to him on all questions of law which required judicial interference. In Scotland, between 78 per cent. and 89 per cent. of the assets was divided amongst the creditors. Therefore, whether they took the experience of England as to trustees, or that of Scotland on the practice followed in that country, he did not see how the House could doubt that the system in England ought to be assimilated to that of Scotland, sweeping away at once the official assignees, messengers, ushers, and all their train. They proposed that trustees should be referred to in the same way as had hitherto been done, and that persons not assenting to this mode should not have their accounts discharged unless a dividend amounting to 6s. 8d. was paid by those trustees. In the bill of 1861 it was proposed to create a chief judge in bankruptcy, and many had held that the want of that chief judge had led to the failure of the act, but he was bound to say that the present Lord Chancellor, who was opposed to the creation of a chief judge in 1861, had seen no reason to alter that opinion. Now, while they withdrew the whole administrative business from the court, they proposed also to put an end to censorial as well as to criminal jurisdiction. Therefore, he could not see anything for a judge to do under this bill, while he thought the existing machinery amply sufficient to deal with any question of law that might from time to time arise. If the commissioners and registrars were at once abolished, they must be paid a large compensation, without the performance of any duties. He did not

think that was a course which Parliament would have sanctioned, more especially as there was reason to think that they might still render useful service to the public. It was, therefore, proposed to reduce the London commissioners to two, and to let the country commissioners die out, leaving the registrars to discharge such duties as could be conveniently performed by them within the existing districts. Having regard to the great reduction in the nature and amount of the duties of the existing bankruptcy officials which would be made by the bill, he did not think they would have been justified in proposing the appointment of a new judge. It had been suggested that one of the Vice-Chancellors should be practically appointed a chief judge in bankruptcy; but he thought this would not be a good plan; and he believed that whatever bankruptcy appeal business might arise after the bill would be easily dispatched by the Lords Justices, as at present. The learned gentleman concluded by saying, that if it was thought expedient to refer the bill to a select committee he should offer no opposition to such a proposition.

Mr. *Moffatt* said, the select committee which had inquired into the subject of the bankruptcy law had recommended the entire abolition of the present system. That committee suggested that the Scotch system should be adopted; but their advice had been only partially carried out. The committee had also advised that a chief judge in bankruptcy should be appointed, but that suggestion had been entirely disregarded in the bill before the House. He thought this was a great mistake. Another error was in not taking the same security as was taken under the Scotch system for the due performance of his duties by the creditors' assignee. In fact, almost all the checks and safeguards which that system established under that head were wanting in the plan of the Government. He did not think that they could have a successful system of bankruptcy if it did not command the confidence of the mercantile community, and he felt certain that that confidence would not be given to the cumbrous machinery which would be established under this measure. He saw no use in retaining so many registrars and other officials as it was proposed to employ. Nor could he see what advantage would be gained by the appointment of a comptroller in bankruptcy, unless it was the erection of a new place at a cost of 1500*l.* a year. The expenses of administering a bankruptcy would not, so far as he could see, be materially reduced by the measure before them. It would have been much better to have got rid altogether of the present bankruptcy commissioners and registrars; nor need there have been any objection to this on the score of expense, for there were funds available for the payment of their salaries without resorting to the consolidated fund. From the inefficient or irregular manner in which they discharged their duties, they were rather an obstruction than anything else, and he had no faith in the working of any system which was intrusted to them. He thought that it was highly objectionable that the form of granting a discharge to a bankrupt should be retained. It was quite right that imprisonment for debt should be abolished, but the law had no right to deprive a creditor of his civil remedy against his debtor. He could not understand on what principle a man who paid 6*s.* 8*d.* in the pound was entitled to his discharge without obtaining the assent of his creditors. The Attorney-General had talked of the hardship of compelling a man who had been unfortunate to carry a load of debt about with him; but he believed that very few cases of real oppression would arise under the system which he advocated. He would give every man who had failed a fair opportunity of starting in life again; but then he would make his after-acquired property liable to his creditors. There were several matters in the bill which he thought could not be satisfactorily settled across the floor of the House; and he should, therefore, persevere with his motion to have the bill referred to a select committee. While he acknowledged the merits of the scheme, he regretted that it had fallen short of the expectations he had formed.

Mr. *Barnett* agreed that it would be a wise thing, when the bill was finally settled, to have it referred to a select committee.

Mr. *Ayrton* said, as having been a member of the bankruptcy committee, the House would give him credit for having examined the present bill with a very critical mind, in order to ascertain whether it gave full effect to the recommendations of the committee, and the result was, that he had

been led to form a very different estimate of it from that of his hon. friend (Mr. *Moffatt*). He thought that the bill, instead of being a feeble effort, was a strong one, and that it gave effect to the general spirit and scope of the conclusions at which the committee had arrived. The bill carried out all the committee suggested with reference to the management of bankruptcy estates, by withdrawing them from legal supervision, and placing them under the control of creditors. The next head was the discharge of bankrupts, and upon that point the bill realised the wish of the committee, but he was bound to say that his hon. friend differed in that respect with the rest of the committee. The next branch of the subject was the condition of the courts. It was true, that in a certain sense, the committee recommended the existing courts should be abolished, and he thought there were ample provisions in the bill to enable the Government in course of time to substitute more simple and economical tribunals for the existing courts. It was said the bill was very long, and that it could not be settled except by a committee up stairs. He admitted the bill was necessarily long, but then a great portion of it consisted of the clauses of former acts, and he would suggest to his hon. and learned friend the Attorney-General that in reprinting the bill the old clauses should be distinguished from the new, and then hon. members would not be frightened by its magnitude. No purpose would be served by referring the bill to the former committee, or a new one, for it would still be necessary to pass it through a committee of the whole House. The proper course was to proceed with the bill, and he ventured to suggest that if there was any difficulty in fixing a night for the committee, a morning sitting could be arranged for the purpose. The clauses would be read one after another, and he believed that very little discussion would be raised upon them. His learned friend the Attorney-General would not do justice to himself, nor to the labours of the committee, if he should allow the bill to go up stairs. He believed the more the bill was discussed the better it would be appreciated, and that it would meet with the general approval of the country.

Mr. *Freshfield* having reviewed the history of the bankruptcy laws down to the act of 1861, said that the fusion of bankruptcy and insolvency then introduced made the Bankruptcy Court a bear garden, and brought the law to a dead lock. It seemed to him that the bill now before the House had not been drawn with an artistic skill worthy of the high reputation of the Attorney-General; and for the sake of economy he recommended the Chancellor of the Exchequer to nominate a committee of three and five members, to whom all bills of such a complicated character should be submitted before they passed the ordeal of a third reading. It was quite impossible that a bill with the number of clauses which this contained could be dealt with satisfactorily in a committee of the whole House.

Mr. *Crawford* thought that the observations of the hon. member for the Tower Hamlets (Mr. *Ayrton*) was nearly conclusive on this question. The bill carried out the principal recommendations of the committee of 1864, and the sooner therefore it received the assent of the House the better.

Mr. *Bazley* said there was nothing in the bill which might not be corrected in a committee of the whole House. Taking the debtor's view of the question, in opposition to the hon. member for Southampton (Mr. *Moffatt*), who took the creditor's view, he hoped the Attorney-General would see the propriety of withdrawing the provision in the bill which debarred debtors of their discharge who had not paid 6*s.* 8*d.* in the pound.

Mr. *Samuelson* likewise hoped that the 6*s.* 8*d.* clause would be omitted from the bill. He also suggested, in the interest of traders, that some arrangement should be made whereby certain conditions of precedence should be granted to creditors subsequent to the bankruptcy.

Mr. *Cowen* expressed himself as much gratified with the proposed change in the law, and recommended that the bill should be proceeded with at once.

Mr. *Loze* reminded the House that a really well-considered measure was before them. For two years a committee constituted of some of the ablest members of the House had sat upon the subject, and the Government having since reviewed their decision they had resolved to adopt the whole of their report. If they were to remit the subject up stairs, the whole question would be reopened again before a tribunal necessarily less informed than its predecessor. As for the drawing

of the bill, he thought they could not do better than trust for that to the Attorney-General.

Mr. *Leatham* stated his general approval of the provisions of the bill, and hoped that the few points that required amendment would be amended in committee of the whole House.

The bill was then read a second time.

The Attorney-General said that, as the general expression of opinion seemed in favour of proceeding with the bill in committee of the whole House, the Government would adopt that course.

Mr. *Moffatt*, although despairing of the bill being made perfect by an investigation in that House, said he would not persevere with his motion to refer it to a select committee.

The Convicts Property Bill, as amended, was considered and agreed to.

The Land Drainage Supplemental Bill and the Inclosure Bill were read a third time and passed.

The Divorce and Matrimonial Causes Bill was passed through committee.

The Labouring Classes Dwellings (Ireland) Bill was read a second time.

The Public Companies Bill was read a third time and passed.

RAILWAYS COMPANIES SECURITIES BILL.

Mr. *M. Gibson* moved for leave to bring in a bill to amend the law relating to securities issued by railway companies.

Agreed to.

BILL IN PROGRESS.

COMPANIES ACT (1862) AMENDMENT.

A Bill to amend the Companies Act, 1862.

[Mr. Milner Gibson, Mr. Monsell, and Mr. Brand.]

Be it enacted &c., as follows:—

SECT. 1. In addition to the powers conferred by sect. 12 of the Companies Act, 1862, on a company limited by shares to modify to the extent therein mentioned, the conditions contained in its memorandum of association, any company limited by shares (incorporated either before or after the passing of this act) may so far modify the conditions contained in its memorandum of association, if authorised to do so by its regulations as originally framed, or as altered by special resolution, in manner in the said act provided, as to divide its capital, or any part thereof, into shares of less amount than that fixed in the memorandum of association, but not of a less amount in any case than 10*l.*, and may for that purpose subdivide its several existing shares, or any of them, into two or more shares, but so that any share created by such subdivision be not in any case of a less amount than 10*l.*

2. Every company that alters the division of its capital under the authority of this act shall give notice of such alteration to the registrar of joint-stock companies.

3. The subdivision of an existing share, under the authority of this act, shall not operate to relieve a member of the company from any liability to which he was subject in respect of that share before its subdivision.

4. This act shall be construed as one act with the Companies Act, 1862, and may be cited as "The Companies Act Amendment Act, 1866."

THE BANKRUPTCY AMENDMENT BILL.—On Saturday morning the Rochdale Merchants' and Tradesmen's Association received the following letter from the Chancellor of the Exchequer, respecting some clauses objected to in the Bankruptcy Amendment Bill:—"11, Downing-street, Whitehall, May 11, 1866. Sir,—The Chancellor of the Exchequer desires me to acknowledge the favour of your letter of the 9th, relating to the period allowed for the consideration of the provisions of the Bankruptcy Bill, and to state that the Attorney-General has every wish to allow sufficient time for this purpose, and that Mr. Gladstone considers there need be no apprehension on this account. I am, Sir, your obedient servant, W. H. Gladstone.—James Fletcher, Esq."

Court Papers.

COMMON-LAW CAUSE LISTS, TRINITY TERM, 1866.

Court of Queen's Bench.

NEW TRIALS.

FOR JUDGMENT.

London.—*Hibbs v. Ross*
Manchester.—*Kelly v. Sherlock*

FOR ARGUMENT.

Moved Easter Term, 1864.

Ches.—*Hughes v. Birkenhead Improvement Commissioners* (First action, to be argued with *D.* To stand over till decision in a similar point in court of error)
—*Same v. Same* (Second action, Ditto)
—*Davies v. Same* (Ditto)

Moved Mich. Term, 1864.

Durham.—*Ecclesiastical Commissioners for England v. Peart* (Part heard)
Moved Easter Term, 1865.

Lancaster.—*Martin v. Smalley & an.* (Stands for arrangement)
Moved Trin. Term, 1865.

Midd.—*Watts & ors. v. Lewis*
Moved Mich. Term, 1865.

Midd.—*Springett v. Balls*
—*Feltham v. England*
London.—*London, Brighton, & South-coast Railway Co. v. Williams*
—*Sandeman v. Scurr*
—*Cleveland Iron Co. (Limited) v. Stephenson*
—*Morgan v. Chetwynd*
Moved Hil. Term, 1866.

Midd.—*Kennard v. Great Western Railway Co.*
—*Falcke v. Gooch*
—*Wood v. Boosey*
London.—*Webb v. Rennie*
—*Tarner v. Walker*

Tried during Term.

Midd.—*Causton v. Wheal Bonnie Mining Co.*

Moved Easter Term, 1866.

London.—*Hyams v. Webster*
—*Ingram v. Fleming*
—*Rain v. Lane & ors.*
—*Dignam v. Cator*
Leicester.—*Buck v. Howard*
Pembroke.—*Lloyd v. Jackson*
—*Reg. v. Stephens*
Glamorgan.—*Reg. v. Dickson*
Cumberland.—*Hardy v. Featherstonhaugh*
—*Same v. Same*
Northumberland.—*Hughes & an. v. Straker & ors.*
Durham.—*Readhead v. Midland Railway Co.*
—*Fairley & an. v. Sweet*
—*Robson v. South Shields Theatre Co. & an.*
Liverpool.—*Wilson & an. v. Bank of Victoria*
—*Forshaw v. Pennington*
—*Hubbert v. Lancashire and Yorkshire Railway Co.*
—*Wilson v. Peat*
—*Shaw v. Lancashire and Yorkshire Railway Co.*
—*Seymour v. Robertson*
Nottingham.—*Parsons v. Hind*
York.—*Sayer v. North-eastern Railway Co.*
—*Webster v. Same*
—*Thompson v. Same*
—*Moore & an. v. Berry*
Leeds.—*Harris v. Wooler*
—*Knowles v. Nunns*
Kent.—*Knatchbull v. Wickes*
Sussex.—*Branton v. Gough*
Surrey.—*Stuart v. Baumont*
Devon.—*Williams v. British Empire Mutual Life Assurance Co.*
Stafford.—*Russell v. Nock*
Gloucester.—*Ricketts v. Cummings & ors.*
—*Rickaby v. Rumboll*

Tried during Term.

Midd.—*Cannon v. Calvert.*

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR JUDGMENT.

**Bryant v. Foot*
**Mee v. Parren & an.*
**Nicholson v. Guardians, &c. of Bradford Union*

FOR ARGUMENT.

†*Hughes v. Birkenhead Improvement Commissioners* (New Trial to be argued with this *D.*, stands over)
†*Same v. Same* (Ditto)
†*Davies v. Same* (Ditto)
†*Jolwald v. Continental Bank Corporation (Limited)* (To stand over)

†*Le Strange v. Rowe* (Part heard, stands over)
†*Tydemann v. Carne* (Stands over)
†*Hetherington v. Hicks* (St. over)
†*Ecclesiastical Commissioners for England v. Peart*
†*Keyes & an. v. Edwards & ors.* (Sp. C. to be stated)
†*Donald v. Suckling* (For re-argument)
**Franklin v. Llantrissant and Taff Vale Junction Railway Co.*
**Swinford v. Keble*

*Somes & ors. v. Jenkins
 *Smith v. Jenkins
 *Lawrence v. Hitch
 †Duffett & ors. v. Hutchings
 *Hart v. Mayor, &c. of Folkestone
 †Ireland & ors. v. Livingston
 †Lund v. Winfield
 †Bailey v. Bowen
 *Jupp v. Cook
 †Hulse v. Whitworth
 †Sacker v. Goldsack
 *Hancock v. London & Ham-
 burgh & Continental Ex-
 change Bank (Limited)
 *Reynolds v. Bowly & an.
 †Hunter v. Wykes
 Radford v. Potts (Appeal from
 County Court of Warwick)
 *Tyson v. Jones & ors.
 *Broomhead v. Bolton

Cowell v. Lucas & ors. (Ap-
 peal from County Court of
 Bradford, Yorkshire)
 †Gibbons v. Ware, Hadham,
 & Buntingford Railway Co.
 †Solomon v. Finigan
 †Danglish & ors. v. Tennent
 †Northouse v. Cane
 †Holder v. Whittingham
 *Hubbersty v. Manchester,
 Sheffield, and Lincolnshire
 Railway Co.
 *Palmer v. Kingston
 *Wilson & an. v. Prowse
 *Hill v. Gare & an.
 *Elliot v. Johnson
 †Coxon v. Sorensen
 †Nicoll v. Watts
 *Richards v. James
 *Sharpe v. James
 *Inre Spark v. Hollingsworth.

London Reg. v. Lord Mayor of the City of London.
 Wiltshire Churchwardens of Easton v. Churchwar-
 dens of St. Mary, Marlborough.
 Liverpool Hodgson v. Liverpool New Market Co.
 Gloucestershire.. Great Western Railway Co. v. Overseers
 of the Parish of Badgworth.
 Lincolnshire Green v. Great Northern Railway Co.

Court of Common Pleas.

NEW TRIALS.

FOR ARGUMENT.

Moved Mich. Term, 1888.

Midd.—Packer & an. v. The
 Great Western Railway Co.
 (To stand over till Beal v.
 South Devon Railway Co.
 in the House of Lords is
 disposed of)

Moved Hil. Term, 1888.

Midd.—Gilbert v. Hassall

Lond.—Acebal v. Bealey

Moved Easter Term, 1888.

Midd.—Campain v. Luck

—Fritag v. Dunnidge

—Pontifax & ors. v. Wigg

—Same v. Same

Lond.—Wildes v. Russell

—Grill v. General Iron

Screw Colliery Co.

—Carr & an. v. Wallachian

Petroleum Co.

—Meldrum v. Chapman

—Foxley v. Bannister

—Markwell v. Knight

—Gray v. Raper

—Greenberg v. Ward (De-
 murrer to be argued here-
 with)

Lond.—Hartley v. Hindmarsh

Surrey—Smith v. Thackerah

—Coulthurst & an. v.

Sweet

Bristol—Hillier v. Alexander
 & an.

—Ward v. Westcomb

Exeter—Thorp v. Facey

Devon—Newton v. Gale

Lincoln—Walker v. Manches-
 ter, Sheffield, and Lincoln-
 shire Railway Co.

Leeds—Rigg & an. v. Same

Stafford—Mullett v. Mason

Beds.—Beckett v. Midland

Railway Co.

Chester—Kelly v. Morray

Brecon—Duke of Beaufort v.

Crawshay

Manchester—Harrison & ors.

v. Henderson

—Manchester Warehouse

Co. v. Beattie

—Negroponte v. Crossley

—M'Kean & an. v. Kay

Liverpool—Wirral Water-

works Co. v. Lloyd, Clerk to

&c.

ENLARGED RULES.

First Day.

Bryant v. Johnson (Sp. C.)
 Budgett v. Johnson (Sp. C.)
 Edwards v. Clarke (Sp. C.)
 Reg. v. London & St. Katha-
 rine Docks Co.
 Reg. v. Ell
 Reg. v. Toomer
 Reg. v. London, Chatham,
 and Dover Railway Co.

Reg. v. Middle Level Com-
 missioners
 Reg. v. Travers Twiss, Judge
 of Consistory Court
 Reg. v. First District Com-
 missioners
 Reg. v. Justices of Sussex
 Reg. v. Gilbert
 Reg. v. Commissioners of Se-
 wers of Level of Caldicot.

CROWN PAPER.

Dorsetshire Reg. v. Farrer.
 Lancashire Trustees of the Duke of Bridgwater v. Sur-
 veyors of Highway for the Township of
 Boodle-cum-Linacre.
 Suffolk Great Eastern Railway Co. v. Church-
 wardens of the Parish of Haughley.
 London Reg. v. Treasurer of St. Bartholomew's
 Hospital.
 Northamptonsh. Chapman v. Chambers.
 Cambridgeshire Searle v. Reynolds.
 Ipswich Ipswich Dock Company v. Overseers of St.
 Peter, Ipswich.
 Buckinghamshire Eustace v. Sargent.
 Yorkshire Wakefield Local Board of Health v. West
 Riding and Grimsby Railway Co.
 Surrey Reg. v. Phillips and Wigan.
 Sussex Windsor v. Jeffery.
 Buckinghamshire Pearce v. O'Brien (First information).
 ——— v. O'Brien (Second information).
 Yorkshire Reg. v. Smith.
 Buckinghamshire Bolton v. Hodgkinson.
 Weymouth Reg. v. Ayling.
 Durham Wood v. Bouron.
 ——— O'Hare v. Craggs.
 Lincolnshire Wray & an. v. West.
 Cambridgeshire.. Whittlesford Tradesmen's Benefit Society
 v. Runham.
 Sussex Reg. v. Guardians of the Poor of Battle
 Union & ors.
 Essex Bruce v. Daunt.
 Metropolitan Po- } Wells v. Hubble.
 lice District .. }
 ——— Peters v. Stavely.
 Sunderland Lewis v. Jewhurst.
 Preston Reg. v. Kidd.
 Darlington ——— Backhouse.
 Cumberland ——— Morton.
 Devonshire ——— Inhabitants of Sherford & ors.
 Blackburn Loynds v. Potts.
 Hertfordshire ... Youngman v. Morris.
 Middlesex Reg. v. Vlasani.
 Yorkshire Sharp v. Smith.
 ——— Hornby v. Close.

SPECIAL PAPER.

Tuesday, May 29.

Johnson & an. v. Royal Mail
 Steam-packet Co. (Case at
 Nisi Prius, set down by
 order)

Consolidated Bank (Limited)
 v. Smith (D, to be argued
 with special case)

M'Andrew & ors. v. Chapple
 & an. (Case by order)

Greenberg v. Ward (D, to be
 argued with New Trial
 Rule)

M'Culloch v. Longe (Case by
 arbitration)

Cooper v. Strong (D)

Smith v. Littledale (D)

Frith & ors. v. Guppy (D)

Bremner v. Hull (Case by
 rule)

Lees v. Newton (Case by
 order)

Lawrence v. North London
 Railway Co. (D, to stand
 over till issues in fact tried)

Mills v. Mayor of Colchester
 (Case at Nisi Prius)

Gorsuch v. Emanuel (D)

Browne v. Silver (D)

National Discount Co. (Li-
 mited) v. Codhart Corpora-
 tion (Limited) (D)

Felton v. Chapman (Case at
 Nisi Prius)

Lingwood v. Gyde—Gyde v.
 Lingwood (Case by Copy-
 hold Commissioners)

Contract Corporation (Li-
 mited) v. Bateman (D)

Gabriel & ors. v. Chard (D)

Arbuthnot v. Streckelsen &
 an. (Case for arbitration)

Seward v. Durrant (D)

Meyerstein v. Padmanaba-
 vally (Case by order)

Alexander v. Dumas (D)

Mayor of Hereford v. Morton
 (App. from justices)

Coward v. Gregory (D)

Bracewell v. Williams (D)

Livesley v. Gilmore (D)

Myers v. Wigram (D)

Wehener v. Buckner (D).

ENLARGED RULES.

First Day.

In re a cause in the Mayor's
 Court of London

Needham v. Bremner
 Crux v. Aldred.

CUR. ADV. VULT.

Guppy & an. v. Frith & ors. (Judgment to be given after issues in fact tried)	Sheldon v. Mayor, &c. of Sta- ley Bridge (Judgment de- ferred till case in House of Lords disposed of)
Appleby v. Meyers	Palmer v. London and South- western Railway Co.
Lane & an. v. Nixon (To stand over till issues in fact tried)	

Cavell & an. v. Prince (D. Part heard 30th April, 1866. To stand over till after trial of issues in fact on 3rd plea)	Vestry of the Hamlet of Mile End Old Town, Midd., v. Humber (D. Part hd. 2nd May, 1866. To stand over till after issues in fact tried).
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Court of Exchequer.

SITTINGS—TRINITY TERM.

Days in Term.		Banc.
Tuesday May 22	Motions.	
Wednesday 23	Errors.	
Thursday 24	.....
Friday 25	.....
Saturday 26	.....
Monday 28	Special Paper.	
Tuesday 29	.....
Wednesday 30	Special Paper.	
Thursday 31	Circuits chosen.	
Friday June 1	.....
Saturday 2	Criminal Appeals.	
Monday 4	Special Paper.	
Tuesday 5	.....
Wednesday 6	Special Paper.	
Thursday 7	.....
Friday 8	.....
Saturday 9	.....
Monday 11	.....

Days in Term.		Nisi Prius.
Wednesday .. May 23	Middlesex, first Sitting.	
Monday 26	Middlesex, second Sitting.	
Monday June 4	Middlesex, third Sitting.	

NEW TRIALS.

FOR JUDGMENT.	
Lond.—Noble v. Trueman	Nottingham—Ward & ors. v. Moss
— Restall v. London and South-western Railway Co.	Leeds—Ambler v. Briscoe
Taunton—Coombes v. Dibble	— Ryalls v. Leader
Liverp.—Brabner v. Macann	— Walker v. Midland Rail- way Co.
	— Nuttall v. Bracewell
	— Longwood v. Ash
	Newcastle—Sutherland v. All- husen
	Manchester—Lancashire and Yorkshire Cotton Manufac- tory and Mining Co. (Li- mited) v. Wilson & an.
	Liverp.—Ward v. Clason
	— Griffiths v. London and North-western Railway Co.
	— Baines v. Ewing
	— Klingender v. Home and Colonial Assurance Co.
	Moved after the 4th day of Easter Term, 1866.
	Midd.—Wilkinson v. Jones
	— Phillips v. Dewdney
	— Sargent v. Imhof.

SPECIAL PAPER.

FOR ARGUMENT.

Cooke v. Mostyn (D. Part heard 14th Nov. 1864. To stand over till issues in fact tried)	Ball v. Nash (D. Part heard 20th Nov. 1866. To stand over till after amendment of Declaration)
Campbell v. Dufaur (D. Part heard 18th January, 1866. To stand over till after is- sues in fact tried)	Haynes v. Naylor (D) Lord Colchester v. Kewney (Sp. C., by order. Part heard 12th June, 1866)

NISI PRIUS SITTINGS, IN AND AFTER
TRINITY TERM, 1866.

Court of Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Wednes., May 23	There will not be any sittings during term in London.
2nd sitting, Monday 28	
3rd sitting, Monday .. June 4	

After Term.

Wednesday June 13	Wednesday June 27
-------------------------	-------------------------

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Court of Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Wednesday May 23	The Court will not sit in London during term.
Tuesday 29	
Tuesday June 5	

After Term.

Wednesday June 13	Monday June 25
-------------------------	----------------------

The Court will sit during and after term at ten o'clock.

Exchequer of Pleas.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Wednes., May 23	The Court will not sit in London during term.
2nd sitting, Monday 28	
3rd sitting, Monday .. June 4	

After Term.

Wednesday June 13	Monday June 25
-------------------------	----------------------

The Court will sit during and after term at ten o'clock.

JURIDICAL SOCIETY.—At the anniversary meeting, on Wednesday, the 9th instant, W. M. Best, Esq., in the chair, Lord Westbury was re-elected as president of the society. Messrs. Worsley, W. Major Cooke, W. W. Kerr, Howard Elphinstone, and C. C. Massey were added to the council. Messrs. George Sweet and F. Lawrence were appointed auditors. Messrs. C. H. Hopwood and W. Stebbing were elected honorary secretaries. A vote of thanks to the chairman concluded the proceedings.

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NOTICE.

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THE JURIST.

LONDON, MAY 26, 1866.

A CASE, curiously illustrative of the mistakes sometimes committed in the course of legislation, has been recently decided in the Court of Queen's Bench. Sometimes verbal and grammatical errors occur. Sir W. Blackstone, in his Commentaries, vol. 4, p. 175, calls attention to a statement in Burn's Justice, "Game," that in one statute only, 5 Ann. c. 14, there is false grammar in no fewer than six places, besides other mistakes. Lord Tenterden was the framer of two very useful statutes—9 Geo. 4, c. 14, and the Prescription Act, 2 & 3 Will. 4, c. 71; but in each of them a verbal inaccuracy is to be found. The 6th section of the former act is as follows:—"No action shall be brought whereby to charge any person upon, or by reason of, any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance be made in writing signed by the party to be charged therewith." Here there is evidently some oversight. The section was discussed in *Lyde v. Barnard* (1 M. & W. 101), and the judges of the Court of Exchequer suggested more methods than one of correcting it. Singularly enough, it seems that there must be an error in the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), when it refers to the 9 Geo. 4, c. 14; the 13th section of the 19 & 20 Vict. c. 97, is as follows:—"In reference to the provisions of the acts of the 9 Geo. 4, c. 14, ss. 1, 8, and the 16 & 17 Vict. c. 113, ss. 24, 27, an acknowledgment or promise made or contained by or in a writing signed by an agent of the party chargeable thereby, duly authorised to make such acknowledgment or promise, shall have the same effect as if such writing had been signed by such party himself." The reference to sect. 1 of the 9 Geo. 4, c. 14, is accurate; it relates to acknowledgments taking a debt out of the operation of the Statute of Limitations; but sect. 8 can scarcely be intended, for it merely exempts from stamp duty every writing required by the act. Possibly the Legislature at the time of the passing of the Mercantile Law Amendment Act, 1856, imagined that sect. 1 of the 9 Geo. 4, c. 114 (Queen's printers' copy) was really divided into three, and this division would make sect. 8 refer to what is now read as sect. 6 above mentioned; although this method of construing the act would be hardly satisfactory, for if a representation in writing, though made by an agent, as to the credit of another person would charge the maker, it would not seem easy to point out why a promise, after full age, to pay a debt contracted during infancy should be valid only when made by the party to be charged therewith, and not by an agent; for this is what is enacted by the 9 Geo. 4, c. 14, s. 5; and therefore it would be difficult to apply the 19 & 20 Vict. c. 97, s. 14, to sect. 6, with-

out also applying it to sect. 5 of the 9 Geo. 4, c. 14, as it is divided in the Queen's printers' copies.

The 8th section of the Prescription Act begins as follows:—"Provided always, and be it further enacted, that when any land or water, upon, over, or from which any such way, or other convenient water-course or use of water, &c." The corresponding words in the 2nd section are, "any way or other easement, or any watercourse, or the use of any water." It seems that the word "convenient," in the 8th section, is an error; it may have been substituted for "easement," and it has been suggested by reading, instead of "convenient," "convenience"—a word used formerly for "easement"—only a slight change would be required to bring the language of the 2nd and 8th sections into harmony. (Gale on Easements, p. 157, 3rd ed.)

There is another kind of mistake which arises when the Legislature passes measures, either without duly considering their effect, or without remembering what has been already done. The history of legislation with regard to horse-racing affords an instance of how much may be done by careless proceeding towards defeating the object which it is desired to promote. The 13 Geo. 2, c. 19, s. 5, legalised races run at Newmarket, Black Hambleton, or for the sum of 50*l.* or upwards; but it also contained a clause (sect. 1), enacting that no person should enter more than one horse for the same race; and another clause (sect. 3) referring to weights. The enactment as to weights was repealed by the 18 Geo. 2, c. 34, s. 11, which provided that it should be lawful for any person to run any match, or to start and run for any plate, prize, sum of money, or other thing, of the real and intrinsic value of 50*l.* or upwards, at any weight whatsoever, and at any place whatsoever. It so happened, that about the year 1840 many persons were proceeded against under the 13 Geo. 3, c. 19, s. 1, for entering more than one horse in the same race; and thereupon the 3 Vict. c. 5, was passed, wholly repealing the act, so far as it related to horse-racing, instead of the provision in sect. 1. The effect of this was to raise serious doubts whether all horse-races would not be rendered illegal by the Gaming Acts; but in *Evans v. Pratt* (3 Man. & G. 759) the Court of Common Pleas decided, that, owing to the words used in the 18 Geo. 2, c. 34, s. 11, horses might still be lawfully used for racing. (Smith's Law of Contracts, 214, 3rd ed.) Again: in the Common-law Procedure Act, 1854, at sect. 88, power was supposed to be given to courts of common law to act in the same manner as courts of equity might act, under the 53 Geo. 3, c. 159; but in the very same session of Parliament the 53 Geo. 3, c. 159, was repealed by the Merchant Shipping Repeal Act, 1854. This mistake has been corrected by the Common-law Procedure Act, 1860, sect. 35.

The mistakes which *Kemp v. Waddingham* (35 L. J., Q. B., 114) illustrates belongs to the latter class. Under the ancient law, proper protection was not afforded to executors and administrators who paid the simple contract debts of the deceased, without knowing that a judgment had been obtained against him. To remedy this, it was, amongst other things, enacted, by

the 4 & 5 Will. & M. c. 20, s. 3 (made perpetual by the 7 & 8 Will. 3, c. 36), that no judgment, not docketed and entered in the books kept for that purpose, should have any preference against executors or administrators in the administration of their testators' or intestates' effects. By the 2 & 3 Vict. c. 11, it was enacted, that no judgment should thereafter be docketed under the provisions of the 4 & 5 Will. & M. c. 20; but that all such dockets should be finally closed immediately after the passing of that act. The provisions of the 1 & 2 Vict. c. 110, the 3 & 4 Vict. c. 82, and the 18 Vict. c. 15, referred only to lands, tenements, and hereditaments. Consequently, owing to the oversight which was committed in framing the 2 & 3 Vict. c. 11, an executor or administrator stood in the same position which he occupied at common law prior to the passing of the 4 & 5 Will. & M. c. 20. At last, in 1860, this error was remedied by the 23 & 24 Vict. c. 38, s. 3, which enacted, that no judgment which was not registered so as to bind lands, tenements, and hereditaments, shall have any preference against heirs, executors, or administrators. In the case in question the judgment had been obtained in 1854, the debtor died in November, 1862, and the judgment was registered in February, 1863. The action was on a writ of revivor, and the defendants, who were the debtor's administrators, pleaded *plene administravit*. The Court of Queen's Bench held that the judgment creditor was not entitled to priority. They, in fact, decided, that where a judgment debtor has died since the passing of the 23 & 24 Vict. c. 38, without the judgment being registered in his lifetime, it is too late to register it after his decease. In the course of the argument *Evans v. Williams* (34 L. J., Ch., 661) was mentioned. In that case Sir R. T. Kindersley, V. C., decided, that where a judgment was registered in May, 1840, against a debtor who died in 1846, and was not re-registered within five years before his death, the judgment creditor was not deprived of his right to priority. The principal ground of the decision, which turned on sect. 4 of the 23 & 24 Vict. c. 38, was, that since from the time of the death of the debtor until 1860, the judgment creditor enjoyed a right to priority in the administration of the deceased's estate; and since no clear indication of such an intention appeared in the act, it could not be held that the statute deprived the judgment creditor of his vested right. The Court of Queen's Bench, possibly, with reference to the Vice-Chancellor's decision, intimated that if the debtor had died before 1860, the judgment creditor having once gained the right, would still have been entitled to priority; and it need hardly be observed, that the advantage of registering a judgment caused by the 23 & 24 Vict. c. 38, does not occur until the death of the debtor; as during his life a judgment creditor has the same remedy against the body and goods and chattels of the debtor, whether the judgment be registered or not. But it may be submitted that there is a difference between the 3rd and 4th sections of the act; the latter, on which the decision of the Vice-Chancellor turned, is not declaratory; that the former, to which the judgment of the Queen's Bench referred, is; so that if the decision in *Kemp v. Wad-*

dingham be correct, it would seem to be questionable, whether the creditor of a debtor who died before 1860, and against whom the judgment had not been registered, would not be deprived of his priority. The legislation on this subject is unfortunately worded, for, as is mentioned in the judgment of Sir R. T. Kindersley, V. C. (*Evans v. Williams*), the word "executors" is by mistake substituted for "ancestors;" and it would seem that the latter word is also omitted in two places in the same section, where it ought to be expressed in conjunction with the words "testator or intestate."

By the resignation of Mr. Badger Eastwood, the office of Reader on the Law of Real Property to the Inns of Court, which he has for several years discharged with great ability and zeal, has become vacant. The Readers appointed under the Consolidated Regulations of the Inns of Court, "for the purpose of affording to the students the means of obtaining instruction and guidance in their legal studies," are five in number:—A Reader on Jurisprudence and Civil and International Law, appointed by the Middle Temple; a Reader on the Law of Real Property, appointed by Gray's Inn; a Reader on Common Law, appointed by the Inner Temple; a Reader on Equity, appointed by Lincoln's Inn; and a Reader on Constitutional Law and Legal History, appointed by the Council of Legal Education.

The Council of Legal Education consists of eight members, benchers; two nominated by each of the Inns of Court. Four members of the council make a quorum. We have seen, in a correspondence between Mr. Baily (one of the council) and Mr. Homersham Cox, published last year in *THE JURIST* (p. 417), how Mr. Baily has been charged with practically reducing the quorum to one in favour of his own protégé, by keeping back the testimonials of the most formidable competitor, which were intrusted to him for the use of the Council, and has neither denied the charge nor resigned his office. The members are appointed for two years, but the custom has been to re-elect them. We presume that the custom will be honoured by a breach when Mr. Baily's term of office expires.

The Readers are appointed for three years, but they also have been usually reappointed, without competition, on the expiration of the term.

Mr. Baily attempted to evade the inquiry into his manipulation of Mr. Cox's testimonials by assuring that gentleman that his book was worth fifty testimonials: a just remark, but inappropriately addressed to one who complained that he had been unfairly defeated in a contest in which testimonials were the weapons, expressly appointed by the quorum himself. We assent to Mr. Baily's proposition in the abstract. We have not forgotten the "strong testimonials" given to Mr. Patrick Robert Welch, by the late Sir W. Atherton and the leaders of the Northern Circuit. The selection of a Reader on Constitutional Law and Legal History by the light of testimonials would, however, have been the only course open to the Council, if Mr. Cox had not been a candidate,

because a man's proficiency in such a subject can only be made known beyond the circle of his private friends, by means of a book or lectures. The same remark applies to the chair of Jurisprudence and Civil and International law. These also are subjects in which distinction cannot be gained otherwise than by writing or lecturing. But in the election of a Reader on Common Law, Equity, or Conveyancing, testimonials seem to be entirely out of place. The Reader must be an experienced man. He is to afford to the students advice and directions for the conduct of their professional studies. He cannot do this to any effect unless he has seen some years of practice. It need not have been hard practice; indeed, the modest remuneration attached to the office will not attract a man whose success has been marked; but a mere closet student who has not become so familiar with actual business as to have acquired a certain professional status, makes, as we have unfortunately seen, but a sorry reader. A man fit for any of the three chairs we refer to will then, of necessity, have become known in his own walk, and testimonials would be mere declarations of private good will, to which no weight ought to be attached. If, moreover, he has discharged his debt to his Profession, by writing a good book, by that also let him be judged. It was by such considerations, and not by favour or patronage, that the excellent appointments heretofore made by the Benchers of Gray's Inn were determined; and we have no doubt that the coming election will be equally discriminating and impartial.

Court Papers.

EQUITY CAUSE LISTS, TRINITY TERM, 1866.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

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Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

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Sir J. Stuart, V. C. (in *Sidebottom v. Adkins*), in quoting this work speaks of it as "a very valuable text-book."—*3 Jurist*, N. S., 632.

"... and in Mr. Best's very learned and philosophical Treatise on the Principles of Evidence all the authorities which were in existence when that work was written are fully considered."—*The Solicitors Journal*, 17th March, 1860.

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THE JURIST.

LONDON, JUNE 2, 1866.

It was said by Lord Nottingham that every fine of the Statute of Frauds was worth a subsidy; and it was justly remarked by that eminent writer, the late John William Smith, that it might now be said that every fine had cost a subsidy, it being universally admitted that no enactment of any Legislature ever became the subject of so much litigation as this. This applies more particularly to the 4th and 17th sections of that statute, as to which scarcely a term elapses without some new difficulty being raised under one or other of them, and brought for argument before the Courts at Westminster. *Noble v. Ward* (4 H. & C. 149) is one of the last of these cases, and goes to the question of how far an original contract, good within the Statute of Frauds, is still in existence, and enforceable, although the parties have come to a new arrangement by parol.

It would seem now scarcely to be doubted that any contract within those sections, made in writing, and signed according to their requirements, may be abandoned by parol. The view taken by the Court of Queen's Bench in *Goss v. Lord Nugent* (5 B. & Ad. 58) would seem to have been, though the point was not there actually decided, that although a contract within the Statute of Frauds could not be altered by parol, it might be rescinded by parol; and that is now generally understood to be the law with regard both to the 4th and the 17th sections. *Goss v. Lord Nugent* was a case on the 4th section of the statute. It was there sought to vary the terms of a contract relating to the sale of land, and to enforce the contract of sale as altered by parol; and the counsel for the plaintiff endeavoured to treat the case as one of abandonment of the original contract as to so much of it as related to the part altered, viz. the condition that a good title should be made, which, it was contended, had been waived as to one of the lots sold. But Parke, J., said, "Assuming that a written contract concerning land may be wholly waived by a new agreement, not in writing, here there has not been a waiver of the entire agreement, but of a part of it only, and the effect of that waiver is to substitute for the original contract a new one, which is to be proved partly by parol and partly by oral testimony."

As to this point, Lord Denman, C. J., delivering the judgment of the Court, said, "And as there is no clause in the act which requires the dissolution of such contracts to be in writing, it should rather seem that a written contract concerning the sale of lands may still be waived and abandoned by a new agreement not in writing, and so as to prevent either party from recovering on the contract which was in writing. It is not, however, necessary to give an opinion upon that point, as this is not a waiver and abandonment of the whole written agreement, but only a part; and the question is, what is the effect of that? It may be said by the plaintiff, that this does not in any de-

gree vary what is to be done by either party; that the same land is to be conveyed; there is to be the same extent of interest in the land, and it is to be conveyed at the same time; and the same price is to be paid; and that it is only the abandonment of a collateral point. But we think the object of the Statute of Frauds was to exclude all oral evidence as to contracts for the sale of lands, and that any contract which is sought to be enforced must be proved by writing only."

In *Goss v. Lord Nugent* the plaintiff unsuccessfully attempted to enforce the contract of sale as altered by parol. In *Noble v. Ward* the plaintiff went back to the original contract in writing, and sought to enforce that contract, although a new one had been entered into by parol in its place; and the Court held that he had a right to do so, because, however clear the intention to rescind might be, yet the whole arrangement having been entered into at one and the same time, to enforce, as to part of it, an agreement to rescind, was to give validity in part to a parol contract for sale, which the statute says shall not be allowed to be good. At the trial of the cause, Baron Bramwell entertained a different opinion, and the plaintiff was nonsuited; and it may still be a question whether the first impression was not the correct view, notwithstanding the consideration with which it was reversed.

We make the following extract from the judgment of the Court, written by Bramwell, B.:—"The facts were—that a contract for the sale and delivery of goods from the plaintiff to the defendants at a future day was entered into on the 12th August, which may be called contract A. That another contract for sale and delivery by the plaintiff to the defendants, also at a future day, was entered into on the 18th August, say contract B. That before any of the days of delivery had arrived, the plaintiff and the defendants agreed verbally to rescind or do away with contract A., and to extend for a fortnight the time for the performance of contract B.; that is to say, the plaintiff had a fortnight longer to deliver, and the defendants a fortnight longer to take and pay for, those goods. This, on principle and authority, was a third contract, called C. It was a contract, in which all that was to be done and permitted on one side was the consideration for all that was to be done and permitted on the other. (See, per Parke, B., in *Marshall v. Lynn* (5 M. & W. 117). It remains to add, that the declaration would fit either contract B. or contract C., and the goods were tendered by the plaintiff to the defendants in time for either of those contracts. My note and my recollection of my ruling are, that contract B. was rescinded, and contract C. not enforceable, not being in writing. I think that was wrong; either contract C. was within the Statute of Frauds or not; if not, there was no need for writing; if yes, there was, because it was a contract for the sale of goods, and so within the 17th section of the statute. That says, that 'no contract for the sale of goods for the price of 10*l.* or upwards shall be allowed to be good, except' there is an acceptance, payment, or writing. The expression 'allowed to be good,' is not a very happy one;

but whatever its meaning may be, it includes this at least, that it shall not be held valid, nor enforced. But this is what the defendant was attempting to do; he was setting up the contract as a valid contract; he was asking that it should be allowed to be good to rescind contract B., and the conclusion arrived at is, that on principle it was wrong to hold that the old contract was gone. It is attempted to say, that what took place when contract C. was made was twofold—first, the old contracts were given up; and, secondly, a new one made. But that is not so. What was done was all done at once—was all one transaction, one bargain; and had the plaintiff asked for a writing at the time, and the defendant refused it, it would all have been undone, and the parties remitted to their original contracts. I think, therefore, that on principle, it was wrong to hold that the old contract was gone." (4 H. & C. 155, 156).

The words of the statute "that no contract for the sale of any goods, wares, or merchandises, for the price of 10*l.* sterling and upwards, shall be allowed to be good, except &c.," taken by themselves, may either mean only that the contract is not to be allowed to be good as a contract of sale, or that the contract is not to be allowed to be good for any purpose whatever. Where the words of the statute are such as to admit of several meanings, the argument from inconvenience should have weight. And the argument from inconvenience is here strongly against holding that the words mean not allowed to be good for any purpose whatever. Cases must be very numerous, indeed, almost of daily occurrence in the commercial world, where both parties to a contract for the sale of goods have altered its terms, with the full intention of abandoning the original contract, and in which either the seller or purchaser may in consequence have so altered his plans, that to revert to the original contract, and call upon him to perform it, would be to place him in a position of serious difficulty. If the intention to rescind, whether it be expressed in words or inferred from the circumstances, is clear, if it be entirely unconditional, and not made to depend on the fulfilment of the other terms of the new arrangement, then, although the agreement to rescind is part of the new arrangement, and made at one and the same time with the new stipulations as to price or delivery of the goods, still it is separable from them, and has its own consideration, viz. the mutual assent of the parties to support it; and it is difficult to see why the new arrangement (as to that part of it) should not be allowed to be good, though it cannot be enforced as a contract for sale. The words of the statute admit of an interpretation that would allow it to be good for the purpose of rescission, and all convenience points that way. We would here cite another passage from the judgment, which puts in a strong light the inconvenience that must follow from the present ruling.

"The cases of *Goss v. Lord Nugent*, *Stead v. Dawber* and others, only shew that the new contract C. cannot be enforced, not that the old contract B. is gone. I think it was not. Inconvenience and absurdity may arise from this. For instance, if the defendants signed the new contract, and not the plaintiff, the plaintiff

would be bound to the old, and the defendants to the new; or if, in the course of the cause, a writing turned up signed by the plaintiff, then they would first rely on the old, and then afterwards on the new contract. But this is no more than may happen in any case within the 17th section, where there has been one contract only." (4 H. & C. 157). The concluding remark does not detract from the force of the observations that precede it. The circumstance, that similar absurdity and inconvenience has followed, from the interpretation put upon another part of the same section of the act, should, we submit, rather operate as a warning. The construction put on the words, "or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised," has been too long adhered to, to be now departed from; but if they had been held only to mean, that both parties must sign the memorandum or note in writing of the bargain, all the fraud and injustice that has sprung out of allowing one man to be fast, and the other loose, would have been prevented, and the words of the statute literally followed. These are some of the considerations that arise on this important decision; which is, we understand, about to be reviewed by the Court of Error in the Exchequer Chamber.

GENERAL EXAMINATION OF STUDENTS.

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By order of the Council,

(Signed) EDWARD RYAN, Chairman, pro tem.
Council Chamber, Lincoln's-inn,
May 25, 1866.

BOOK RECEIVED.

A Treatise on the Jurisdiction, Pleadings, and Practice of the County Courts in Equity. By Edmund Chisholm Batten, M. A., and Henry Ludlow, M. A., of Lincoln's Inn, Esqrs., Barristers-at-Law. 12mo., pp. 572.—Amer.

ASSOCIATION OF TRADE PROTECTION SOCIETIES.

THE annual meeting of this Association was held at the Westminster Palace Hotel, on Wednesday last, Mr. Robert Wells, of Hull, in the chair.

The Chairman said, that the first business was the consideration of the bankruptcy bill. The committee met last night, and drew up a short report of the expression of opinion which they had elicited from the different societies.

The Secretary (Mr. Mellor) then read the report, which recommended, "that the bill should receive the support of the commercial community, subject to such modifications as were named. The committee approved of the realisation of the assets being left in the hands of the creditors, who were to appoint inspectors and trustees; but such appointment should be made by a majority in number and value of creditors, and not a majority in value only, as proposed by the bill. They approved of the disqualification of relatives as trustees. They thought the trustees should be paid either a sum in gross or by commission on the sum realised, to be fixed by the creditors at the time of the appointment of the trustee, and not by the inspectors after the estate was realised. They regarded the distinction between trader and non-trader as unnecessary, and desired non-traders to be liable to a summons similar to trader-debtor summons. No debtor should be made bankrupt on a debt under 10*l.* or 20*l.* The present law as to imprisonment for debt and the discharge of debtors from prison should remain unaltered. As to the adaptability of county courts, the committee were not agreed. No priority of full payment of trust funds should be made, except in cases under wills and settlements for widows and children. The discharge of a bankrupt should be given upon payment of 6*s.* 8*d.* in the pound; or the adoption of the Scottish system, viz. at any time, by the assent of all the creditors who have proved; after six months, a majority in number and four-fifths in value; after twelve months, a majority and two-thirds in value; after eighteen months, a majority in number and value; in two years, by the court, after due notice to the creditors and a hearing, and that without the certificate of the trustee being necessary. The criminal sections had not been amended. The addition of clauses to include a deceased insolvent's estate was considered desirable."

The various recommendations of the report were then considered; the result of the discussion being, that the meeting approved of the following resolutions for presentation to the Attorney-General:—

"The societies, representing 20,000 members, who are merchants, manufacturers, and tradesmen resident in all the principal cities and towns of the United Kingdom—

"1. Approve of the general features of the bill, and desire to give them support, subject to the following amendments.

"2. They unanimously regard the distinction between traders and non-traders as unnecessary, and desire non-traders to be liable to a summons similar to a trader-debtor summons.

"3. That it is essential the present power of imprisonment for debt in the superior courts in final process should be retained.

"4. That no priority of payment in full, as under sect. 249, should be allowed to friendly societies.

"5. That the requisition, under sect. 269, of payment of dividend of 6*s.* 8*d.* in the pound, as a condition precedent to the right of a bankrupt to procure his discharge, be expunged, and that in lieu of the mode of obtaining the discharge of a bankrupt, as

mentioned in the bill, the present Scottish system of consent be substituted.

"6. That some provision should be inserted for the punishment of the several offences mentioned in the third division of the 159th section of the act of 1861, and for fraudulent preference.

"7. That the provisions of the bill relating to trust deeds require very careful consideration, and they are of opinion that it should be competent to the present prescribed majority of creditors to make any such arrangements by deed with their debtors, as they may think fit."

At half-past five o'clock the Attorney-General received a deputation from the meeting in the Earl Marshal's room, House of Lords. Mr. Norwood, M.P. for Hull, introduced the deputation, and there were also present the following members of Parliament:—Mr. Phillips, Mr. Bayley, Mr. E. James, Lord Milton, Mr. Baines, Sir Morton Peto, Hon. Mr. Egerton, Mr. Horsfall, Mr. C. Turner, Mr. Graves, Mr. Graham, Mr. Hadfield, Mr. Hibbert, Mr. H. Berkeley, Sir Francis Crossley, Bart., and Mr. Harris.

Mr. Wells, chairman of the association, having read the foregoing resolutions,

The Attorney-General, in reply, said he could not then enter into a discussion upon the several points which were contained in the resolutions; but he could assure them that these points had not escaped consideration. Some of them had been very carefully considered. There were two on which he might say, that his own personal and private opinions were very much in accordance with those they had expressed, viz. the one which related to the distinction between trader and non-trader. He had no prejudice in favour of that clause. He could not say positively whether it would be better to do what they wished or not. With respect to the clause affecting friendly societies, there was ground for consideration in what they had said. It might be thought inconsistent with the engagements of those societies, that they should take away from them the privileges which they possessed by law. It might be regarded as a retrospective law against them. Might a compromise be effected in this way, that the privilege should be continued to the present societies for a limited time, and not be extended to those which might be formed hereafter? As to imprisonment for debt, he saw no prospect whatever of being induced to waive that portion of the bill. He did not think that the objections which had been urged were sufficiently solid to remove the reasons which had induced them to make that proposal. Respecting the dividend, that was no doubt a very important and difficult matter, as to the fixed dividend which should entitle to discharge. He had no doubt that they had well weighed their propositions. The object which they (the framers of the bill) had in view was, by having such rules, to discourage that class of trading commonly called reckless trading, and so make it not too easy for the bankrupt to enter into business again. Whether they (the association) or the Government were right, he would not then say. He should like to know what the views of the association were, supposing a compromise of this kind were entertained, to retain the present clause as to the general rule, and giving such power as they suggested to the creditors within a limited time, and then to the Court to dispense with the dividend on the six years' period, if it was thought that the conduct of the bankrupt had been unexceptionable, or his losses due to unavoidable circumstances. He should be very glad to hear their opinion upon it.

Mr. Wells said that the association would meet again to-morrow, and would then take the question into consideration. He would beg to ask the hon. and

learned gentleman, if there was any particular reason why the amount should be fixed at 6s. 8d.²

The Attorney-General replied, that it was one-third of a pound, that was all. It was possible that some persons might actually endeavour to increase their assets with a view to getting that dividend (6s. 8d.), if they contemplated bankruptcy; but he would be quite ready to make the punishment clause more stringent.

Mr. Wells said that the difficulty was to ascertain whether such was the intention.

The Attorney-General.—Certainly.

Mr. Wells further pointed out, that in certain cases the 6s. 8d. clause would bear very hard.

After some further conversation, Mr. Norwood, M.P., thanked the hon. gentleman for his courtesy in having received the deputation; after which, those present withdrew.

OFFICE OF LAND REGISTRY.—GENERAL ORDERS, DIRECTIONS, AND FORMS.

(10th May, 1866.)

PART I.—PROCEEDINGS ON APPLICATION FOR FIRST REGISTRATION WITH AN INDEFEASIBLE TITLE.

Application for Registration.

1. "Application for registration of title shall be made in writing, signed by the applicant or his solicitor on his behalf, and shall state the nature of the interest of the applicant, and a general description, in concise terms, of the property the title to which is proposed to be registered, and whether or not the applicant claims the mines and minerals. It shall also state whether the registration applied for is one with or without an indefeasible title."¹ (1.)

2. The following persons are, by the 4th section of the act, authorised to apply for registration of title, viz.—

1. The owner in fee-simple.
2. Persons who collectively are owners of the fee-simple, or have the power of acquiring the same.
3. Persons who have the power of appointing the fee-simple.
4. Trustees for sale of the fee-simple.
5. The owner of the first estate of freehold and first vested estate of inheritance.
6. Any purchaser of a fee-simple where his contract empowers him so to do, or the vendor consents.
7. Any person authorised by the Court of Chancery to make such application.

The same section also enacts, that "application may be made, although the estate of the person applying may be subject to charges and incumbrances."

3. The application for registration should state such several particulars of the property, including its actual or estimated quantity, as may be sufficient to connect it with that comprised in the abstract, to be delivered at the office.

4. The person desiring to register his title may effect such registration personally, or by a solicitor, attorney, or certificated conveyancer.

* The number placed after any rule denotes, if in parenthesis, that such rule forms part, under the like number, of the General Orders of the 1st October, 1862; and if not in parenthesis, that such rule forms part, under the like number, of the General Orders of the 6th July, 1864.

Most of the forms referred to in these directions, may be obtained in blank at the office of Land Registry, No. 34, Lincoln's-Inn-fields, W. C., on application personally or by letter.

5. The following is a form of application by an owner in fee-simple, viz.—

No. —. LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53.

[*Thomas Hopkins*], of [*Sevenoaks*, in the county of *Kent*, farmer], being the owner in fee-simple of certain hereditaments in the parish of [*Tunbridge*], in the county of [*Kent*], called or known as [*High-beech Farm*], containing by estimation [150 acres], or thereabout, and [or but not] the mines and minerals under the same, hereby requires the title to such hereditaments to be registered as indefeasible, according to the terms of the said act.

The address of the said [*Thomas Hopkins*] for service is [as above] [or, if the application is made through a solicitor, at the office of such solicitor]. Dated, &c.

[*Signature of the applicant or his solicitor.*]

If the applicant be not owner in fee-simple the statement in the application must be altered according to his actual title.

6. "The application shall be left in the office, and on leaving thereof an appointment shall be made to attend the registrar thereon, who shall determine whether the application shall be proceeded with, and give any special directions he may think necessary for the prosecution thereof." (2.)

7. The application may be left personally or sent through the post, and if an appointment to attend the registrar be not made on leaving the application, notice will be sent to the applicant when attendance on the registrar is necessary.

8. On every warrant to attend the registrar a stamp of 3s. must be affixed.

Abstract.

9. "Together with, or within such time after the date of the application as the registrar shall fix, an abstract of the title of the applicant shall be left in the office. Such abstract shall be in such form, and contain such information, and be prepared in such manner, in all respects, as the registrar shall from time to time approve or direct." (3.)

10. Where necessary, the time for the delivery of the abstract will be fixed, according to circumstances, in each case. As a general rule, if not delivered with the application, it should be lodged as soon after as possible.

11. The abstract should be in such form, and contain such information, and be prepared in such manner, as that furnished by a vendor to a purchaser, where there are no restrictive conditions as to the title contained in the contract for sale. A stamp of 10s. must be affixed on the abstract.

12. Abstracts left in the office will be permanently retained therein, unless the registrar shall otherwise direct.

Affidavit verifying Abstract.

13. "An affidavit satisfactory to the registrar shall be left with the abstract, to the effect that such abstract contains a true abstract of all deeds and writings within the period covered by the abstract, and a true statement of all facts and circumstances relating to or affecting the title to the property, and every part thereof, to the best of the deponent's knowledge, information, and belief, and setting forth the means and sources of such knowledge, information, and belief." (4.)

14. The object of this affidavit or statutory declaration is to shew that the abstract is a bona fide abstract of the title to the property, and that no document or circumstance affecting the title is kept back. It should be made by the applicant's solicitor or his clerk, or by the applicant himself, or such other person as can best

depose to the facts, according to the circumstances of each case.

15. The following is a form of statutory declaration verifying abstract, viz. :—

No. —. LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of *[Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer.]*

I *[Samuel Johnson, of Gray's-inn-square, London, solicitor]* do solemnly and sincerely declare that the abstract of title marked *[A.]*, and produced to me at the time of my making this declaration, contains a true abstract of all deeds and writings within the period covered by such abstract, and a true statement of all facts and circumstances relating to or affecting the title to the property, the subject-matter of this application, and every part thereof, to the best of my knowledge, information, and belief.

That the means and sources of such my knowledge, information, and belief are as follows; that is to say :

[Here state the means of knowledge, as for example:— I acted as the solicitor of C. D., late of &c., deceased, under whose will the said Thomas Hopkins acquired the property, the subject-matter of this application, and in that capacity I held the deeds and documents relating to such property, and since the decease of the said C. D. I have acted as the solicitor of the said Thomas Hopkins in all matters relating to the said property, and such abstract was prepared by me after a careful examination of such deeds and documents.]

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the 5 & 6 Geo. 4, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other Provisions for the Abolition of unnecessary Oaths.'"

[Samuel Johnson.]

Solemnly declared and subscribed at —, the — day of —, 186—, before me, a commissioner to administer oaths in Chancery in England.

Schedule of Evidence.

16. "A schedule of all deeds, probates, pedigrees, certificates, receipts, and other documents to be produced in verifying the abstract and deducing the title, together with an exact copy or the original of every map or plan drawn on, or referred to, in any abstracted document, shall be left with the abstract." (5).

17. The object of this schedule is to prevent the expense and delay of having to make requisitions, and obtain replies on points of evidence, the answers to which are already in the power of the applicant. This schedule must not be a list of the deeds and documents abstracted, but should only contain matters of evidence, certificates, declarations, &c., not set out or referred to in the abstract. No document abstracted should be inserted in this schedule.

18. A copy, or the original, of every map of the property which may be in the applicant's possession or power will be required to be produced, and should be left with the abstract.

Examination of Abstract.

19. "All abstracts and copies of documents deposited in the office shall be examined and compared with the original title deeds and documents, and all searches which shall be required to be made by the re-

gistrar in the course of the investigation and completion of the title, or with reference to the entry at any time of any title or estate on the register, shall be made by such person and in such manner as the registrar shall direct. Such further or additional abstract and copies of any deeds or instruments, shall be made by the applicant, and deposited in the office, as shall from time to time be required. The costs and expenses of examining and comparing the abstract and copies with the original deeds and documents, and of all searches and all fees to be paid to any examiner of title or conveyancing counsel, shall be settled by the registrar, and be paid by the applicant." (9).

20. The original deeds and documents referred to in the abstract will be examined and compared therewith by some person appointed for the registrar for that purpose, and the charges of the person so employed must be paid to the applicant; the amount being settled by the registrar if the parties differ. The deeds and documents may be sent to the office for examination, or, if more convenient, may be produced in the country, or in any part of London.

21. Where any inclosure, or other local or private act, or any Chancery or other legal proceedings, are abstracted or referred to, a print of such act or office copy of such proceedings should be left in the office before the examination is proceeded with.

Examination of Title.

22. "The registrar shall direct the title to be examined and reported on by one of the examiners of title, or by one of the conveyancing counsel of the Court of Chancery." (10).

23. When the abstract has been found to be correct, and the charges of the person who compared such abstract have been paid to him, the abstract, &c. will be laid before such one of the examiners of title as shall be nominated by the registrar for the purpose; before whom will also be laid, in cases of difficulty or where a complete abstract has not been left in the first instance, any additional abstract or papers which may be left in the office in the course of the investigation of title. The fees to be paid to the examiner of title on the abstract, &c., will be the usual fees paid to conveyancing counsel, and must be paid by the applicant.

24. The opinion of the examiner of title will be returned to the registrar, and such requisitions as are necessary on the title will be sent from the office to the applicant or his solicitor, for his replies, which must be written upon the same paper as the requisitions, and returned therewith to the office.

25. "If at any time during the investigation of the title, any question or doubt or dispute arise *[See No. 270]*, the registrar may require notice to be given to any person interested in such question or doubt or dispute, to the effect, that the same is to be brought before the registrar, at a time to be mentioned in such notice, for his consideration, and that such person may attend before the registrar at such time by himself, or his solicitor or counsel, and take part in the investigation and settlement of such question, doubt, or dispute. And at the time mentioned in such notice, such person may attend accordingly, and take part in the discussion and settlement of such question, doubt, or dispute." (14).

26. The following is a form of the notice required, viz. :—

No. —. LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of A. B.

Take notice, that on the investigation of the title to the lands in the parish of —, in the county of —, an application for the registration of the title to

which has been made by A. B., of &c., a question has arisen as to [here insert nature of question], and take notice, that such question will be brought before the registrar at the office of land registry on the — day of —, at — o'clock, for his consideration, and that you may attend before the registrar at such time and place, by yourself, or your solicitor or counsel, and take part in the investigation and settlement of such question. Dated, &c.

[Signature of the applicant or his solicitor.]

To X. Y., of &c.

Proceedings under this order are not taken except at the request of the applicant, or his solicitor.

27. By the 6th section of the act, any question, doubt, or dispute as to any matter of title that may arise in the course of investigating the title may be referred to the judge of the Court of Chancery. Generally, however, all questions arising on the title are first decided by the registrar or assistant registrar.

Maps and Description of Parcels.

28. [See 46.] "Any accurate map or plan of the property shall be deposited in the office when directed. Such map or plan shall be made in such form and on such scale and in such manner in all respects as shall from time to time be directed, and shall contain the names of all the owners and occupiers of the lands bounding or immediately adjoining the property." (7).

29. "A full and complete schedule or description of the property shall also be made and deposited in the office at such time and made in such form as shall be directed for that purpose. Such schedule or description shall contain, besides the full particulars of the property, all the boundaries thereof, together with the names and addresses of all the owners and occupiers of lands adjoining to and forming the boundaries thereof, and the persons other than the owners (if any) receiving the rents of such adjoining lands, so far as the same can be ascertained, and the name and address of the lord of, the manor, if the lands are situate within or held of any manor." (8).

30. The word "occupiers" in the 7th and 8th Orders of 1862 may be read as "tenants."

31. The map and description there referred to must shew the present actual state and condition of the property. They may be left with the abstract, and if not, notice will be given to the applicant of the time when the same will be required to be deposited. They will not in ordinary cases be required until after the title has been examined, and has been shewn to be satisfactory. [But see Nos. 16, 18.]

32. The map may be a recent and correct estate map, or a copy of any parish map, or of the tithe map, if on a sufficiently large scale to ensure accuracy. One series of closes round the boundaries of the property should, when practicable, be shewn upon the map, and the exact position of the boundaries claimed, whether centre or side of road, fence, stream, &c., or otherwise, should be defined on the map, either in writing or by initial letters. The names of the owners and tenants or occupiers of the adjoining lands should also be written upon the map. The map and description should refer to each other by numbers. Lands situated in different parishes should be distinguished on the map, and entered separately in the description.

33. In every case where practicable, and whether or not any other map is furnished, an extract from the tithe map should be left in the office, and this should be left at the same time as the abstract.

34. The tithe maps are lodged in the Map Department of the Copyhold Inclosure and Tithe Commission, No. 3, St. James's-square, S. W., under the charge

of Lieut.-Col. Leach, R. E., the head of that department. Copies of these maps may be obtained on application, by letter or otherwise, at that office, at a small cost*. If there be no map available of the property, it will be necessary that one should be prepared. In that case, as well as in all other cases where there may be any difficulty with reference to the map of the property, it will be desirable to seek the advice and assistance of Col. Leach, on the ground both of economy and accuracy. Col. Leach may be applied to by letter or otherwise, as most convenient.

35. The following is the form of schedule or description used in the office:—

No. —		LAND REGISTRY.		In the Matter of the Application of [Thomas Hopkine.]		of the Parish of —, and County of —.	
DESCRIPTION OF THE LANDS FORMING THE ESTATE KNOWN AS —, in the Parish of —, and County of —.				BOUNDARY LANDS.			
LANDS TO BE REGISTERED.				BOUNDARY LANDS.			
Names of Farms, and Descriptions of Closes.	Area in Statute Measure.	Names and Addresses of Tenants or Occupiers.	Under what Lease or Agreement held, and the Date, and for what Term.	Names and Addresses of Tenants or Occupiers, Owners, and Persons (if any) other than Owners to whom Rent is paid of Lands bounding the Estate, to be inserted opposite Closes which adjoin the Boundary.	Persons, if any other than Owners, to whom Rent is paid, such as Mortgagees or Receivers, &c.	Surveyors or Clerks of Trustees of Roads bounding or intersecting the Lands to be registered.	Remarks.
Numbers on the Map sent to the Office.	A. B. P.			Tenants or Occupiers.	Owners.		

NOTE.—If any part of the estate to be registered, or any part of the adjoining boundary land, is held of or situate within any manor, the name and address of the lord should be given. Lands held under different titles, or situate in different parishes, should be kept distinct. Mines and minerals, if claimed, should be specified and described. If the property consists of houses in towns, the names of the street and numbers should be given. All rights, or other easements, disputed boundaries (if any), or any matter of liability affecting any of the lands to be registered, should be stated. [Signature of the applicant or his solicitor.]

36. The schedule or description of the land furnished by the applicant must be left in duplicate, and the land comprised therein must (See Nos. 40, 46, 78) be satisfactorily identified with the parcels or description contained in the title deeds, pursuant to the 10th section of the act, which provides (inter alia) that "the identity

* The cost of tracings of maps varies from 1s. to 2s. 6d. per 100 acres of ordinary rural districts; but an additional charge, in proportion to the increased labour of the draftsman, is made where the tracing embraces a town or village, or where the area is small.

of the lands with the parcels or descriptions contained in the title deeds shall be fully established," and the correctness in all respects of such schedule or description must be shown by statutory declaration, or by oath under the 8th section, which enacts, that "if required by the registrar the description of the land furnished by the applicant shall be verified by his own oath, or the oaths of persons having full means of knowledge."

37. The following is a form of declaration verifying the schedule or description:—

No. —. LAND REGISTRY.

In the matter of the act 25 & 26 Vict. c. 53, and of the application of [*Thomas Hopkins.*]

I, A. B., of &c., do solemnly and sincerely declare that the paper writing marked with the letter (A.) [*this will be the schedule or description of parcels left in the office*] produced to me at the time of my making this declaration, contains a true and complete description of the property, the subject-matter of this application, and also the boundaries of such property, and also a true and complete statement of the names and addresses of the several tenants or occupiers of the property the subject-matter of this application, and of all the property adjoining to and forming the boundaries thereof, and of the owners and persons, if any, other than owners to whom rent is paid in respect of such adjoining property, and of the surveyor or clerk to the trustees of the boundary or intersecting roads, and also a true description of and reference to all leases and agreements under or subject to which the property, the subject-matter of this application, or any part thereof, is now held or subject, and also of the roads forming part of the boundary of the said property, to the best of my knowledge, information, and belief.

That the means of such my knowledge, information, and belief are as follows; that is to say—

[*Here state the means of knowledge, as for example:— I have been for ten years last past, and still am, the agent of the said Thomas Hopkins, in the receipt of the rents and management of the said property, the subject-matter of this application, and I prepared the schedule or description contained in the said paper marked (A.) from my actual knowledge of the property, and after inquiries made in the neighbourhood as to the boundary lands.*]

And I make, &c.

Surveys and Notices.

38. "The registrar may require that the description, quantities, and boundaries of the lands, and the accuracy of any map or plan, be investigated and ascertained by some person nominated and appointed by himself, who shall, at the expense of the applicant, make such surveys and such investigations and inquiries on or in the neighbourhood of the lands, or otherwise, as the registrar shall require. Such notices shall be given of such surveys, investigations, and inquiries in such form and to such persons as the registrar shall direct, and the applicant shall pay the expenses of such surveys, investigations, and inquiries to such person, and in such manner and to such amount, as the registrar shall from time to time direct." (11).

39. This investigation, which will in no case be required before the registrar is satisfied with the title, is to avoid encroachment upon the lands of adjoining owners. For this purpose the assistance of the Map Department of the Copyhold, Inclosure, and Tithe Commission has been obtained, and the map and description furnished by the applicant will be sent to that department, where they will be examined,

under the direction of Colonel Leach, to ascertain that they correspond with each other, and accurately represent the property*.

40. [See Nos. 36, 46.] The 10th section of the act provides (inter alia) that "the registrar shall have power, by such inquiries as he shall think fit, to ascertain the accuracy of the description and the quantities and boundaries of the lands," and for this purpose (except in cases where the registrar shall think such a course unnecessary), a person will be sent to the property itself, to verify the boundaries, and to ascertain that they are accurately defined upon the map, and in that case the applicant must provide some intelligent person well acquainted with the property to accompany the person making such investigation†. And to afford the owners and occupiers or tenants of adjoining lands and the trustees of boundary roads protection against encroachments, notice will generally be required to be given to them of such investigation, that they may attend to assist in verifying boundaries, and to give any necessary information; and notice will also generally be required to be given to the principal tenants or occupiers of such parts of the lands proposed to be registered as form the boundaries of the property. The notices must be prepared by the applicant [See No. 43], and after being settled in the office and stamped with its seal, should be served by him. Not less than seven days' notice should be given.

41. The following is the form of notice of survey used in the office, viz.:—

No. —. LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of [*Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer.*]

Take notice, that the registrar has directed a surveyor to attend, on the — day of — next, on the [*lands called or known as High-beech Farm, in the parish of Tunbridge, in the county of Kent*], at — o'clock in the — noon, to survey and perambulate the boundaries of the same, for the purposes of registration under the provisions of the above act.

And notice is hereby given to you, in order that you may attend the said survey and perambulation, and point out to the said surveyor the boundaries of the said property, and any other matters material to the registration, to the end that such boundaries may be duly inquired into and correctly defined, and the property correctly represented by him in such survey and on the map of the said premises, to be settled for the purposes of the registration.

But take notice also, that any objection or claim you may have to make in respect to the intended registration must be made, signed, and proceeded with, in such manner as will be pointed out in the notice of the intended registration, which will be given in due course. [See No. 61.]

* The expense of this will be after the rate of 2s. 6d. per hour, according to the time actually occupied. The time required will probably vary from a few hours to two or three days, according to the degree of care and accuracy with which the documents have been prepared by the applicant, and the extent and character of the property.

† The charge of the person making the investigation will not exceed the rate of 1l. 1s. per diem, and his actual travelling expenses. The time occupied will depend upon the character, extent, and intricacy of the property, the distance travelled to the locality, the completeness of the documents furnished, the diligence used by the parties interested, and the facilities and information afforded to the person employed. A compact rural property of 500 acres should not, under ordinary circumstances, occupy more than one or two days.

The perambulation will commence at [*"Brown's cottages," or some other convenient place for beginning the perambulation*].

Dated, &c.

[*Signature of the applicant or his solicitor.*]

42. If the service of the notice be personal, it must be proved by statutory declaration. [*See Nos. 292-5.*] If the service be through the post-office, it should be made by registered letters; and in such case open envelopes, duly addressed, marked "registered," and stamped, and containing notices duly stamped and under the seal of the office, should be left at the office for postage.

43. If there should be any doubt as to who should be served with notice, or if the persons should be very numerous, or there should be any other difficulty, the registrar will, on application to him, give the necessary directions for the service.

44. The property can be registered as one estate or as [*See No. 276*] separate estates; but in the latter case the particulars of each estate must form a separate record in the register, distinguished by a separate number, and a separate map must be deposited for each such estate. It is obvious, therefore, that the applicant should determine as to this before the survey is made. It will not, however, be necessary, in case of such separate registrations, to give any additional notices of the survey.

Disputed Boundaries.

45. The 16th section of the act provides, that "if there shall be any disputed question of boundary between the applicants and any proprietor of adjoining land, which shall not have been previously determined by any competent authority, it shall be competent for the parties, or either of them, to object in writing to the determination of such question by the registrar, or by a judge of the Court of Chancery, under this act; and if any such objection shall be made, the registrar shall specify upon the record of title the existence of such disputed question of boundary, and that the registration is made subject thereto."

Map for Deposit in Office.

46. When the survey and investigation have been completed, a fair copy of the map, as settled, with a barrier containing the names and area, &c. of the several closes written on the margin thereof, will be prepared at the aforesaid map department, for deposit by the applicant in the office, as part of the description of the property under the 10th section of the act, which provides (*inter alia*), that "except in the case of incorporated hereditaments a map or plan shall be made and deposited as part of the description." [*See No. 28.*] The same fair copy map will unless materially altered, in consequence of claims made after the advertisement of the intention to register the property, so as to render a fresh copy necessary, ultimately be permanently deposited in the office as part of the description of the property*.

47. If it is proposed to deal with the property for building purposes, it will save both expense and delay in dealing with it in lots after registration, if, after the building plan is as far as possible arranged, the map be lithographed under the direction of Colonel Leach, at the aforesaid map department. The parties by whom or on whose behalf any map is deposited in

the office are responsible for the correctness of such map.

Statement required by the 7th Section of the Act.

48. "The particulars required by the 7th section of the act shall be furnished by the applicant in writing in such form as the registrar shall direct; and any objections made by the applicant to the settlement thereof by the registrar shall also be made in writing, and left in the office within such time as shall be appointed for that purpose. On such objections being left, an appointment shall be obtained for attendance before the registrar for his consideration thereof." (13).

49. The statement under the 7th section should be furnished as soon as the registrar is satisfied with the title to the land, and the description and map have been settled and approved in draft.

50. For the assistance of the applicant, a draft of this statement is generally prepared in the office, and he can obtain a fair copy thereof on application to Messrs. Fry & Son, No. 14, South-square, Gray's-inn, London, W. C., the law stationers employed by the office, on payment to them of the usual copying charges.

51. The statement will consist of—

1st. The "exact description of the lands."

This must be prepared from the draft description and deposited map, as the same shall have been previously settled by the before-mentioned investigation, and must in form consist of a general description of the property, with reference to such map.

2nd. "A statement of the persons, or classes or descriptions of persons (if any), that are or may become entitled, and of the estates, &c."

This statement must contain the particulars as the same appear from the investigation of the title, and are admitted by the applicant, or if any questions arising with reference thereto have been previously decided, then according as the same shall have been so decided.

3rd. "A statement of the mortgages, &c."

This statement must contain the mortgages, &c. as they appear from the investigation of the title, and are admitted or have been decided to exist.

52. In the event of the property being subject to special trusts or limitations, or to complicated liabilities under any will, deed, or other document, it may be necessary to refer in the register to such document, and that a printed copy of such document should be left in the office before the registration is completed. In such case the document [*See Nos. 271, 136, 138*] may be printed through the office upon the same terms as are hereinafter stated with reference to printed copies of documents relating to registered land.

53. In the simple case of the applicant being the owner, subject to a mortgage in fee, and claiming the mines and minerals, his wife being barred of dower by declaration, the statement may be in the following form; in other cases the form must be altered to meet the particular circumstances:—

No. —. LAND REGISTRY.

Statement under the 7th Section of the Act.

First. "Description of the lands to be registered."

The hereditaments called or known as —, in the parish of —, in the county of —, containing —, or thereabout, in the tenure or occupation of —, bounded on or towards [*state such of the boundaries as will assist to identify the property*], and delineated on the map No. —, deposited in the office of Land Registry as part

* The cost of maps on mounted paper, proper for this purpose, varies from 1*d.* to 3*d.* per acre; but if the map embraces a town or large village, or is of house property, or the area is small, an addition to these charges would be made in proportion to the increased labour of the draftsman; and in cases of extraordinary or unforeseen difficulty, it is possible that charges somewhat larger than those previously mentioned may have to be made.

of the description of the same hereditaments, and thereon edged with red, together with the mines and minerals under the same.

Secondly. "Statement of the persons or classes, or description of persons that are or may become entitled to such lands, and of the estates and interests that exist or may arise or become vested in such persons respectively."

[A. B.] of &c., is entitled in fee-simple in possession.

[A. B.] was not married before the year 1834, and has, by deed dated since that year, declared that his widow shall not be entitled to dower.

Thirdly. "Statement of the mortgages, charges, and incumbrances affecting such lands, or any part thereof, and of the persons entitled thereto both at law and in equity."

By deed dated &c., the hereditaments were granted to [C. D.] therein described as of &c., in fee, to secure £— and interest, and the said [C. D.] [or E. F.], of &c., is now entitled thereto.

[Signature of the applicant or his solicitor.]

54. Unless, in the description of the lands in the 7th section statement, the mines and minerals are expressly claimed and mentioned, they will, pursuant to the 9th section of the act, be deemed not to be included in the property to be registered.

55. The statement, as furnished or as approved of by the applicant, must be signed by him or his solicitor, and sent to this office.

56. If the registrar shall not acquiesce in the statement when so signed, he will make such alterations therein as he shall think proper; and in that case, if the applicant shall object to the alterations, the course of proceeding is pointed out by the 7th section of the act, and [See No. 48] the 13th Order of 1862.

57. The 7th section of the act provides, that any objection to the settlement by the registrar of the above statement, if not allowed by the registrar, shall, at the request of the applicant, be referred to and decided by the judge of the Court of Chancery. [See No. 275.]

Advertisements and Service of Copies.

58. "Before any title is registered, notice of the intention to register the same shall be given by advertisement in one London and one local newspaper at least, and in more newspapers if the registrar shall so direct, and also in colonial and foreign newspapers, if the registrar shall think it necessary or desirable. Such advertisement shall be repeated as often as the registrar shall direct. Such notice shall contain, besides the particulars required by the 11th and 12th sections of the act, such other particulars as shall be deemed necessary. Notice of the intention to register shall be served on such of the tenants and occupiers of the land as the registrar shall direct." (G. O., 15th Jan. 1863).

The 15th Order of 1862 has been revoked, and the Order of 1863 has been made in substitution thereof.

59. "The form of such notices shall be settled and approved by the registrar before the same be advertised or served, and a tracing or copy of the map or plan of the land, or of any part or parts thereof, shall be attached to such notices for service, or any of them, if the registrar shall so direct. Satisfactory proof shall be given of the publication and service of such notices." (16).

60. When the statement under the 7th section of the act has been settled, the notice to be advertised of the intended registration must be prepared by the applicant. The 11th section of the act provides, that the registrar "shall require such notices as General

Orders shall direct to be given by public advertisement, of his intention to register such lands, with an indefeasible title at the expiration of a period of not less than three months from the date of such advertisement." And the 12th section enacts, that "such notice shall contain a copy of the description of the land as proposed to be registered, and the names and descriptions of the applicants for registration," and that "the notice shall also state the place, time, and manner at and in which any party may be heard to shew cause against such registration."

61. The following form of advertisement or notice is that now generally used in the office, viz. :—

No. —.

LAND REGISTRY.

In the matter of the act 25 & 26 Vict. c. 53.

Notice is hereby given, that on the application of [Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer], the registrar intends, at the expiration of three calendar months from the date hereof, to register with an indefeasible title, the [hereditaments called or known as High-beech Farm, in the parish of Tunbridge in the county of Kent, containing 150 acres, or thereabout, in the tenure or occupation of Wm. Brown], and delineated on the map No. —, deposited in the office of Land Registry as part of the description of the same hereditaments, and thereon edged with red [together with the mines and minerals under the same.]

If any person objects to, or desires to shew cause against such registration, or claims that the same should be subject to any conditions or reservations, or that any particular estate or incumbrance, charge, or liability, not already proved or admitted before the registrar, should be entered on the register, such person may be heard at the office of Land Registry, No. 34, Lincoln's-inn-fields, at any time before the expiration of the said three months, personally, or by his solicitor or counsel, or by affidavit or otherwise, to make such objection to, or to shew cause against, or to make such claim in respect of, such registration. But any person desiring to make such objection or claim must lodge the same in writing, stating the particulars thereof, and with his name and address thereto, to the said office, before the expiration of the said three months, otherwise he will be excluded from making the same.

The aforesaid map may be inspected at the said office at any time before the expiration of the said three months.

Dated, &c.

[Signature of the chief clerk, and of the applicant or his solicitor.]

62. The advertisement or notice, when prepared, must be left in the office to be settled by the registrar, who will direct in what papers it shall be advertised. Generally it will have to be inserted once in one London and one local paper. The advertisement of the notice must be proved by the production of the newspapers containing the same, which should be sent to the office immediately after their publication. The notices for service, and the parties on whom such service is to be made, and the mode of service, must also be settled by the registrar, and application should be made to him for that purpose.

63. The 12th section of the act provides, that "a copy of such notice shall be served on every adjoining occupier; and the person (if any) to whom such occupier pays rent, and on the lord of the manor in any case in which the lands are situate within or held of any manor, and also on every person, not having already had notice of the application, who shall appear to have or claim any estate or interest in or right over the land, or any part thereof, and on such other persons as under the special circumstances of each case

shall be deemed necessary." The word "occupier" in this section may be read as "tenant." Service may, if the registrar think fit, be made through the general post.

64. Tracings of the boundaries of the property, so far as they affect the respective adjoining owners, will in most cases be required to be attached to the notices served on them, and such notices in addition to a copy of the advertisement should contain the following reference to such tracing, viz. "a tracing of the boundaries shewn on such map of that part of the property comprised therein, adjoining the land of which you are the owner, is attached hereto." The tracings will be prepared at the office of the Tithe Commission.

65. All the notices provided for by the 12th section of the act must be prepared, settled, and served, and the service verified in like manner as the notices of surveys. The notices are generally required to be served on the same day as the advertisement is published, and if served through the post they should be posted so as to be delivered on that day.

(To be continued.)

CAUSES ENTERED AFTER THE FOURTH DAY OF TRINITY TERM.

COURT OF QUEEN'S BENCH.

CROWN PAPER.

Buckinghamshire Reg. v. Wycomb Railway Co.	
Metropolitan Po-lice District... v. Petheridge.	Vestry of the Parish of St. George, South- wark, v. Petheridge.
Brighton Brighton Local Board of Health v. Sten- ning.	
Cumberland Dixon v. Steel.	
Somersetshire .. Reg. v. Brannan.	
Durham Hodgson v. Graveling.	

COURT OF COMMON PLEAS.

NEW TRIAL.

London—Kitchen v. Hawkins.

DEMURRER PAPER.

Fotherby v. Metropolitan Rail- way Co. (D.)	Tuesday, June 5.
Joly v. Dixon (D.)	Gray v. Gibson (Sp. C.) London and South-western Railway Co. v. Reeves (Ap.)

COURT OF EXCHEQUER.

SPECIAL PAPER.

Bates v. Knoop (Sp. C.)	Mascall v. Scott (Sp. C. by order)
Pearson v. Pearson (D.)	Hodgson v. Sidney (D.)
Barnford & an. v. London, Brighton, and South Coast Railway Co. (D.)	Giddings v. Penning (D.) London Mercantile Discount Co. (Limited) v. Kintrea (D.)
Ryland v. Millward (D.)	
Martin v. Dodds (D.)	

Days appointed for Errors and Appeals after Trinity Term, 1866.

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Wednesday June 13 | Thursday June 14

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Friday June 15 | Saturday June 16

EXCHEQUER.

Monday June 18 | Tuesday June 19

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THE JURIST.

LONDON, JUNE 9, 1866.

It occasionally happens, that a matter which has been much discussed, and has been already made the subject of many decisions, suddenly presents itself in a new aspect, and the tribunal before which it arises compelled to resort for the solution of the question to first principles, is astonished to find, that what seems so common and elementary, is still uncertain. A case of this sort has been recently argued in the Court of Exchequer (*Nuttall v. Bracewell*), and now stands for judgment. The point which appears to await decision is, in substance, whether the owner of land separated from the margin of a stream by intervening riparian land can obtain, by the grant of the riparian owner, such a right to the use of the stream as will enable him to sue a higher riparian owner, who obstructs his enjoyment of that use. It is possible that, as often happens when a doubtful point appears to be on the verge of solution, some circumstance in the case may enable the Court to come to a decision without determining the general question; but in the meantime, and without attempting to anticipate the judgment of the Court, it is proposed briefly to call the attention of our readers to the principles involved in the discussion. In doing so, the remark forcibly suggests itself, that in all such questions, much turns on the choice of the starting point in the course of reasoning. An action is brought, and the plaintiff accuses the defendant of violating his rights by disturbing his enjoyment; the defendant asserts that he has done no more than he was entitled to do, and that he is not answerable for the injurious consequences. The question then arises, which ought first to be inquired into, the right of the plaintiff to his enjoyment, or the duty of the defendant to abstain from such a use of his property as causes injury to the plaintiff? Where the right begins, the duty ends; and where the duty ends, the right begins. Now, in many cases, the first general statement of the right or the duty is so clear, that it is tacitly assumed; but where questions arise which call for a recurrence to first principles, and a strict analysis of the legal elements involved, it is of material consequence to conduct the investigation in the correct order; and it may in general be said, that in cases of contract, the obligation is logically the first thing to be considered; in cases affecting the law of property, the right. Proceeding on this footing, what is the right which belongs to a riparian proprietor in respect of a stream running through or by his property? It scarcely needs now to be stated, that he has no property in the water, but that he has a right to its use, as "incidental to his enjoyment of the land." In plainer language, the right to use the water is part of his property rights in the land, and this use is limited only by the similar rights of those to whose land the stream passes after leaving his. Now, let it be supposed, in order to obtain a case as clear from

difficulties as may be, that a person owns the land on both sides of a whole bend of a stream; it is clear that he would be entitled to draw off the water at the upper end, and after using it himself, to return it, undiminished in quantity, and unaltered in quality, to the stream at the lower end; and this he might accomplish in the same time that the water would naturally have taken to reach that point, so as to keep the flow of the water to his lower neighbour's land in all respects precisely the same as it would naturally have been. And as his neighbour would suffer no injury, in fact, from this user, so he could not lose any legal right by it, since acts which in no way affected him, could never establish a title to do acts which might cause him injury. Suppose, in the next place, that he conveyed to another person a piece of land in the centre of the bend, and further granted to the purchaser, for the use of his premises, the right of laying pipes bringing water from the upper end, across his land to the central spot, and of discharging the water over his land so as to rejoin the stream at the lower end in the same manner as it had formerly done; what right would be created by such a grant? In the first place, it is clear that a right to have pipes bringing water in another's land, as well as the right to go across another's land to fetch water, is an easement; the latter right has even been prescribed for as a custom. The grantee has, therefore, obtained an easement. But the owner of an easement has a right of action against any person who disturbs him in its use; it might, therefore, seem at once to follow that the grantee would in this case have an action against any one who intercepted the water of the stream, so as to prevent it from flowing down his pipes. And if the having the flow of the water is part of the easement, this does, in fact, follow; but the question arises—is it a part of the easement, or is the easement only the right of having the pipes in the grantor's land, and is the right to have the water only a license? Now, a license may be open to two difficulties. First, a license as such is revocable, and becomes irrevocable only when coupled with a grant; but the cases where the grant has been held to give the license this character of permanence, investing it with the character of a true easement, were cases where it was a means of realising the enjoyment of the grant, or making the grant profitable; whereas, if the easement is here reduced to the right to have the pipes in the land, that grant is really only the means of making the license profitable, and the case is thus reversed. But in substance this point is immaterial, for as the grantee is entitled by the grant to have the pipes there, and in a condition to carry down the water, if the water comes to them, the question on the license is reduced to the second difficulty, viz. that a license to take does not give any right to the object of license until it is taken, and amounts only to a permission to have it if it is there to have. If this be the state of things, then not only cannot the grantee complain of the diversion of the stream by the higher owner, but the grantor himself may intercept the water before it reaches his grantee's pipes, and carry it round to the streams by a different course, leaving the grantee with nothing but an action

on his covenant (if he should happen to have one suited to the contingency), or at least only with the remedy afforded him by a suit in equity. It may be questioned, however, whether the introduction of the doctrine as to licenses, and this division of the right which is purported to be granted, is justified, and whether it does not proceed on a merely superficial resemblance of the present case to the case of licenses to take something which is part of, or a product of, the land. Any use or enjoyment of land may be the subject of a license, which is nothing but a permission by the owner, making the acts sanctioned by it lawful so long as the license continues; but most of the acts or uses which may be thus permitted, may, by appropriate methods, be made the subject of a permanent right; and it is often merely a question of form whether it is the one or the other. Let it be borne in mind that flowing water is not the subject of property, nor is any part or product of the land, but that the use of it by the owner of the land is, in fact, one of the uses of the land. Let it also be remembered, that the case supposed is a case in which there is granted to the owner of a tenement a right to take the water over the land of the riparian owner for purposes connected with the tenement. There will then seem to be no great difficulty in treating the whole as a single right, the grant transferring to the grantee a definite portion of the grantor's rights of use of his own land, and limiting the rights of the grantor, to the extent necessary to give effect to the grant. Is there any principle of law or of convenience which forbids the making of such a grant? It was urged in *Stockport Waterworks Company v. Potter* (3 H. & C. 300), where the question, as stated above, did not arise, that to allow of such a multiplication of rights would be to expose the higher owner to a multiplicity of actions in case of his acting in excess of his rights; but Bramwell, B., pointed out that this objection was of no force, since the same effect would be produced by a subdivision of the ownership of the actual ripa, which might be carried to any extent, and that such a complaint was altogether insensible in the mouth of one who had only to keep within the limits which the law assigned him, to be free from any action at all. The argument was pressed to a still further point in that case, by instancing the case of persons supplied with water by companies; but, whether that argument was or was not a good one with reference to the state of circumstances then under consideration, it has clearly no application to the case now supposed. These arguments are really only the fringe, and if they may be so termed the prejudice, of the case. The real question is, whether the owner of land, who is absolutely entitled to have a stream enter his land in its natural condition, unobstructed, unaltered, and undiminished, and who is entitled as part of the use and enjoyment of his land, to use it during its passage through his land for all purposes, subject only to the duty of allowing it to pass on to the land below him in its natural condition, is as a matter of law entitled to deal with this right of use, as with other rights of use, by transferring it to another person in the manner, and subject to the conditions, required by the

law in the case of similar grants. The law of watercourses has been invested with a kind of mystery, and the right to their enjoyment has been dignified by the obscure name of a *jus naturæ*; but the plain result of the recent cases seems to be, that the enjoyment of a watercourse is in fact a part of the enjoyment of the land, and that it is peculiar only in this, that in respect of its natural character, and of the equal footing as to its enjoyment on which all stand through whose land the stream flows, and of the mutual necessity under which they are to one another to provide for its discharge, the land of riparian owners is burdened with the obligation of receiving it, and their use of it limited by the condition of not hindering its equal use by others. But where this burden and this limitation are not affected (as they cannot be by the mere act of one riparian owner), it is not easy to see what injurious consequences would ensue from giving a legal sanction to the derivative uses which we have been considering.

REGULÆ GENERALIS.

ORDER OF COURT.—May 22, 1866.

WHEREAS, by an act passed in the session of Parliament holden in the 23 & 24 Vict. c. 149, it was in the 9th section enacted, that the deeds, books, documents, and papers belonging to the suitors in the said court, which had theretofore been under the custody of the Masters in Ordinary of the said court, should be transferred to the custody of the Clerks of Records and Writs of the said court, and William Worden, the office keeper at the offices in Southampton-buildings, Chancery-lane, where such deeds, books, documents, and papers were deposited, should have the care of the same, and should, so far as related thereto, be considered the officer of the Clerks of Records and Writs, and should hold such office at the pleasure of the Master of the Rolls, and that on the death, retirement, or removal of the said William Worden it should be lawful for the Master of the Rolls to appoint a person to have the care of such deeds, books, documents, and papers, at a yearly salary not exceeding 100*l.*, and on any vacancy in such office, to supply such vacancy.

And whereas by the Courts of Justice Building Act, 1865, after reciting that the legal business hitherto carried on in the buildings situate in or near Southampton-buildings, known as the "Masters' Offices," and erected in pursuance of the act of the session of the 32 Geo. 3, c. 42, was intended to be transacted in the courts, offices, and premises authorised to be erected under that act, and it was expedient that such Masters' offices should be appropriated in manner therein-after mentioned for public purposes, it was enacted that all the buildings erected as aforesaid, with the sites thereof, and all the lands and hereditaments, if any, purchased or acquired in pursuance of the said act of the 32 Geo. 3, with all their actual and reputed appurtenances, should, on the passing of that act, vest in the Commissioners of her Majesty's Works and Public Buildings, as incorporated by the act of the session of the 15 & 16 Vict. c. 28, to be held by them for the purposes of the last-mentioned act, discharged from all subsisting trusts declared with respect thereto, provided that the said commissioners should not take possession of any part or parts of the said buildings that might be occupied for legal purposes, until the Lord Chancellor certified that in his opinion such

part or parts was or were no longer required by the person so occupying the same.

And whereas that portion of the said buildings in which the said deeds, books, documents, and papers are now deposited is not well adapted for the purpose, and the greater part of such buildings has been appropriated for the use of the Patent Office, and it is desirable that the said deeds, books, documents, and papers should be deposited and kept in the Public Record Office, where divers records and documents belonging to the said court are deposited.

Now, I do hereby order that the said deeds, books, documents, and papers which are now deposited in the said buildings in Chancery-lane aforesaid, shall be removed therefrom, and shall be deposited and kept in the Public Record Office, and shall there remain and be under the same custody and care as is provided with respect to such deeds, books, documents, and papers by the said 9th section of the first hereinbefore recited act.

CRANWORTH, C.

CALLS TO THE BAR.

THE undermentioned gentlemen have been called to the Bar:—

LINCOLN'S INN.—Alfred Claribaux Curlew, Esq., B.A. (holder of the studentship, 1866); Alexander Carter, Esq., B.A.; George Francis Dowdeswell, Esq.; George Willis Penton, Esq., B.A.; William Rose Holden, Esq.; Thomas Cope, jun., Esq., B.A.; Henry Meredyth Plowden, Esq., B.A.; James Douglas Walker, Esq., B.A.; James Alexander Cruikshank, Esq., B.A.; Thomas Douglas Murray, Esq., B.A.; Henry Richard Tomkinson, Esq., M.A.; Thomas Durrell Hodge, Esq.; William Whitworth, jun., Esq., B.A.; William George Lemon, Esq., B.A.; Edmund James Townley, Esq., B.A.; Frederic Thompson, Esq., M.A.; Darnley Rowland Poppy, Esq.; Sefton West Strickland, Esq., M.A.; Henry Godefroi, Esq., LL.B.; David Lindo Alexander, Esq., B.A.; Robert Stanley Scholfield, Esq., M.A.; Henry Rowland Brown, Esq.; Edward Haggard, Esq.; Theodore Cracraft Hope, Esq.; Charles Braine Finlayson, Esq.; John George Laing, Esq., M.A.; Carr Stephen, Esq.; Manomohan Ghose, Esq.; and Judah Philip Benjamin, Esq.

MIDDLE TEMPLE.—Joseph Edward Grant Dawson, Esq., B.A.; Conrad Hume Pinches, Esq.; Henry Bohn, Esq.; Theodore Thomas, Esq.; Charles Thomas Browne, Esq.; Francis William Gardner, Esq.; Joseph Firth Bottomley, Esq.; Charles Miller, Esq.; Albert Birmingham Miller, Esq., B.A.; George Hollings, Esq.; Henry Wildey Wright, Esq.; Paynton Pigott, Esq.; Richard Chester Fisher, Esq., B.A.; Stainsby Henry Pigott, Esq.; William Griffiths, Esq., B.A.; Ralph Heap, Esq., B.A.; William Bushe Power, Esq.; Edward Bennett, Esq.; David Brandon, Esq.; Septimus Man, Esq.; and Hugh Reilly Semper, Esq.

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GRAY'S INN.—Sidney Laman Blanchard, Esq.; and John Southgate Ford, Esq.

OFFICE OF LAND REGISTRY.—GENERAL ORDERS, DIRECTIONS, AND FORMS.

(Continued from p. 228).

Notice to Tenants and Incumbrancers.

66. Before or when any property is advertised for registration notice of the intention to register must be given also to the tenants and incumbrancers of the property, and such notices must be prepared, settled, served, and the service verified in like manner as the other notices before provided for.

67. The following are the forms of notices to tenants (A.) and incumbrancers (B.) respectively used in the office, viz. :—

No. —. LAND REGISTRY.

In the matter of the act 25 & 26 Vict. c. 53, and of the application of [Thomas Hopkins.]

Take notice that it is the intention of the registrar, on the application of [Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer], to register the title to [here insert short description of lands proposed to be registered, and of the interest of the particular tenant therein] [certain hereditaments called or known as High-beech Farm, in the parish of Tunbridge, in the county of Kent, of which (or of the part of which numbered on the map No. —, deposited in this office as part of the description of the said hereditaments, and which map can be seen at this office) it is stated that you are tenant under a lease dated the 19th day of June, 1860, for twenty-one years from the 24th day of June, 1860.] And that if you claim any interest therein other than as such tenant as aforesaid, you must lodge your claim [the claim should bear the same number as this notice] in writing, stating full particulars thereof, at the office of Land Registry, 34, Lincoln's-inn-fields, on or before the — day of —. Dated, &c.

[Signature of the applicant or his solicitor.]

To X. Y., of &c.

No. —. (B.) LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of [Thomas Hopkins.]

Take notice, that on the investigation of the title to [here insert short description of land proposed to be registered] [certain hereditaments called or known as High-beech Farm, in the parish of Tunbridge, in the county of Kent] application for the registration of the title to which has been made by [Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer], it appears that you are interested in such hereditaments under or by virtue of [here insert particulars of incumbrance], [a deed dated the 2nd day of December, 1861, between the said Thomas Hopkins, of the one part, and William Brown, of Cheapside, in the city of London, stationer, of the other part, by which the said hereditaments were granted to the said William Brown in fee to secure 1000*l.* and interest.]

And take notice, that it is the intention of the registrar in registering the title to the aforesaid hereditaments to register the same, subject to the aforesaid incumbrance; and that if you claim to have any interest in the said hereditaments other than under or by virtue of such incumbrance as aforesaid, and in respect of the moneys thereby expressed to be secured, or such part thereof as is now owing, or if the particulars of such incumbrance are not correctly stated above, or if, for any other reason, you object to such registration, you must lodge your claim or objection [the claim or objection should bear the same number as the notice], in writing, stating the particulars thereof,

at the office of Land Registry, 34, Lincoln's-inn-fields, on or before the — day of —. Dated, &c.

[Signature of the applicant or his solicitor.]

[To the above-named William Brown.]

68. If the last-mentioned notices are not given before the advertisement is published, a copy of the advertisement should accompany every such notice.

Objections to Registration.

69. "If any person object to the registration, or claim that the same shall be subject to any condition, qualification, exception, or reservation, such person shall make such objection or claim in writing, and the same shall be signed by the person making the same, or his solicitor, and contain an address in Great Britain at which service on him shall be made, and such objection or claim shall be left at the office before the expiration of the time limited by the notice for such purpose. But the time for leaving such objection or claim may be enlarged by the registrar if he shall so think fit." (17).

70. The following are forms of objections (C.) and claims (D.) respectively:—

LAND REGISTRY.

No. —. [The objection should bear the same number as the number on the advertisement or notice.] (C.)

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of A. B.

E. F., of &c., hereby gives notice that he objects to the registration of the title to the lands called or known as — [or otherwise identified], in the parish of —, in the county of —, notice of the intention to register which has been given by public advertisement [or served on him, as the case may be].

The nature of his objection is — [here state nature of objection.]

The address of E. F. for service is —, in the parish of —, in the county of —. Dated, &c.

[Signature of the objector or his solicitor.]

LAND REGISTRY.

No. —. [The claim should bear the same number as the number on the advertisement or notice.] (D.)

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of A. B.

E. F., of —, hereby claims that the registration of the title to the lands called or known as — [or otherwise identified], in the parish of —, in the county of —, notice of the intention to register which has been given by public advertisement [or served on him, as the case may be], shall be made subject to [here state nature of claim].

The address of E. F. for service is —, in the county of —. Dated, &c.

[Signature of the claimant or his solicitor.]

71. If any objection or claim with reference to registration shall be lodged in the office, notice thereof will be given to the applicant or his solicitor.

72. "The applicant or his solicitor, within such time as shall be appointed for that purpose, shall serve every person making any such objection or claim with a notice in writing to the effect that the objection or claim will be heard before the registrar at the time therein mentioned, such time not being less than two clear days after service of such notice. The applicant or his solicitor shall obtain an appointment before the registrar for hearing the same at the time mentioned in such notice, and on such hearing the person making such objection or claim may appear and be heard in person or by his solicitor or counsel." (18).

73. The following is a form of the notice required:—

No. —. LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of A. B.

Take notice, that the objection [or claim] lodged by you to [or on] the registration of the title to the lands called or known as — [or otherwise identified], in the parish of —, in the county of —, is appointed to be heard before the registrar at the office of Land Registry, 34, Lincoln's-inn-fields, London, on the — day [not less than two clear days after service of notice], of —, at — o'clock, and that you may attend before the registrar at such time and place by yourself or your solicitor or counsel, and then and there shew cause by affidavit or otherwise in support of your objection [or claim]. Dated, &c.

[Signature of the applicant or his solicitor.]

To X. Y., of &c.

74. The notice must be prepared, settled, and served, and the service verified in like manner as other notices before provided for.

75. The 13th section provides, that "the registrar may decide on such objection or claim, or may refer the same to the judge of the Court of Chancery." If the registrar decide, either party may appeal to the court from his decision.

76. The 24th section of the act enacts, that "it shall be lawful for the registrar, and for the judge of the Court of Chancery respectively, to order the costs and expenses properly incurred of any person properly appearing upon any proceeding taken under this act for the purpose of such registration to be paid by the applicant."

Reference to Court.

77. If any question is referred to the court, the mode of proceeding is by summons in chambers, as pointed out by the 134th section of the act. [See No. 274.]

Verification of deposited Map with Parcels in abstract.

78. Before completion of registration, the description [See Nos. 36, 46] and deposited map of the property, as finally settled for registration, are required to be identified with the parcels in the abstract by statutory declaration.

79. The following is a form of such declaration, viz. :—

No. —. LAND REGISTRY.

In the matter of the act 25 & 26 Vict. c. 53, and of the application of [A. B.], of —.

I [C. D.], of &c., do solemnly and sincerely declare that I am and have been since the year 18— well acquainted with the hereditaments in the parish of —, in the county of —, delineated on the map, No. —, deposited in the office of Land Registry as part of the description of the same hereditaments, and thereon edged with red, proceedings to obtain an indefeasible title to which, under the same number, are now pending.

That the said [A. B.] or his tenants have been to my knowledge for — years and upwards last past, and are now, in the receipt of the rents and profits, or in the actual possession of the same hereditaments, and every part thereof.

That the same hereditaments are the hereditaments comprised in and expressed to be conveyed by a deed dated the — day of —, and made between —, by the following description. [Here set forth the description from the deed referred to, but if the parcels are very long, instead of setting them forth, a reference may

made to the abstract. The abstract in that case must be made an exhibit.] And I make, &c.

Searches.

80. When the title is ready to be entered on the register, such searches for judgments, &c. must be made as the registrar shall think right. These searches will be made by a person appointed by the registrar for such purpose. The charge of such person for making such searches must be paid by the applicant. The amount will be settled by the registrar if the parties differ.

81. Before registration, the applicant must also cause a search to be made in the register against caveats; and in case any caveat has been lodged with the registrar, the course to be pursued is pointed out by the [See Nos. 90, 93] 38th section of the act.

Oaths before Registration.

82. The 22nd section of the act provides, "that before the final registration of any land with an indefeasible title, the applicant and his solicitor or agent, or certificated conveyancer, and such other person or persons as the registrar shall require, shall make oath that all deeds, wills, and writings relating to the title of the lands, or any part thereof, and all facts material to the title thereto, and all charges, liens, incumbrances, contracts, and dealings affecting the same, or any part thereof, or giving any right as against the applicant, have to the fullest extent of their respective knowledge, information, and belief, been made known to the registrar."

83. The affidavit should be in the form following:—

No. —. LAND REGISTRY.

In the matter of the act of the 25 Vict. c. 53, and of the application of A. B.

We [A. B.], of &c., the above-named applicant, and [C. D.], of &c., the solicitor of the said [A. B.] in the matter of this application, severally make oath and say, that all deeds, wills, and writings relating to the title of the lands, the subject-matter of the above-mentioned application, or any part thereof, and all facts material to the title thereto, and all charges, liens, incumbrances, contracts, and dealings affecting the same, or any part thereof, or giving any right as against the said applicant, have to the fullest extent of our respective knowledge, information, and belief, been made known to the registrar of the office of Land Registry.

Sworn at —, in the county of —, on the — day of —, 188—, before me, &c.

Value for the Purpose of the 127th and 128th Sections of the Act on First Registration.

84. The 127th and 128th sections provide (inter alia) for the payment of fees on the first entry of land on the register, and such fees have been fixed according to the following scale, viz.—

Property not exceeding 1000 <i>l.</i> in value,	£	s.	d.
for every 100 <i>l.</i>	0	5	0
If not exceeding 5000 <i>l.</i> , for the first 1000 <i>l.</i>	2	10	0
And for every 100 <i>l.</i> above.	0	3	0
If not exceeding 20,000 <i>l.</i> , for the first 5000 <i>l.</i>	8	10	0
And for every 100 <i>l.</i> above.	0	2	0
If above 20,000 <i>l.</i> , for the first 20,000 <i>l.</i>	23	10	0
And for every 100 <i>l.</i> above.	0	1	0

Fractional parts of 100*l.* are reckoned as 100*l.* Stamps to the amount of the fees must be affixed by the applicant, before registration, to the particulars, under the 7th section above mentioned. The mode of ascertaining the value is pointed out by the 35th

and 36th Orders of 1862. [See Nos. 277, 278; and see also No. 132.]

Completion of First Registration.

85. The 14th section of the act provides, that if at the expiration of the time named in such notice [that is, the advertisement of the intended registration] there shall be no objection to the registration applied for, or none allowed, and no appeal pending, or, if any appeal shall be then pending, as soon as any objection to such registration shall have been finally disallowed by the court of appeal, or the appeal withdrawn, the registrar shall complete such registration in manner following; that is to say,

First, the registrar shall enter in a book to be called "The Register of Estates with an Indefeasible Title" such description of the estate as shall be finally approved of, and shall annex thereto any map or plan which shall be deemed necessary, and shall distinguish the estate so entered by a particular number or numbers, and the entry shall refer to another book, to be intitled "The Record of Title to Lands on the Registry."

Secondly, in the last-mentioned book, under the same number or numbers, shall be entered, in concise terms, an exact record of the existing estates, powers, and interests in the land so registered as aforesaid, and the names and descriptions of the persons or classes of persons that are or may become entitled thereto respectively:

Thirdly, in a book to be intitled "The Register of Mortgages and Incumbrances" shall be entered, under the same number or numbers, an account of all the charges and incumbrances affecting the lands, or any part thereof, or the estate or interest therein of any person named in the record of title.

86. The entries for the register are prepared in the office, from the statement under the 7th section of the act, as finally approved, after all claims and objections (if any) have been disposed of, and before completion of the registration the draft of such entries is generally required to be approved of on behalf of the applicant.

Stamping Deeds on First Registration.

87. "Where any of the muniments of title are in the hands of an incumbrancer or other person not bound to produce the same, the consent of such person to the production of such muniments and the stamping thereof, as required by the 91st section of the act, must be procured." (6).

88. [See No. 279]. The 91st section provides, "that when an estate is entered on the register, the deeds and evidences of title produced to the registrar shall be stamped, so as to give notice of the registration." Under this last section all the muniments of title belonging to the applicant, including those in the hands of incumbrancers deriving title through him, must previously to registration be produced at the office, and stamped accordingly. But before being stamped they will, at the expense of the applicant, be looked through by the same person who examined the abstract with the original deeds and documents, to see that such of the muniments produced as affect the title are included in such abstract.

Notice of Registration.

89. The 30th section of the act provides, that "so soon as any land is registered, if there shall appear to be any charge or incumbrance affecting such land, or any part thereof, which is entered in the register of incumbrances (the owner of which has not had notice of the application), notice of such registration shall be immediately given by the registrar to the person entitled or interested in such charge or incumbrance."

Caveat before Registration.

90. The 35th section of the act enables any person "claiming such an interest in land as entitles him to object to any disposition thereof being made without his consent," to lodge a caveat with the registrar to the effect that the cautioner is entitled to notice of any application to register such land; but such caveat must (sect. 36) be supported by affidavit stating the nature of the interest of the cautioner, and such other matters as may be required by the registrar.

91. "Every caveat to be lodged with the registrar under the 35th section of the act shall contain the address and description of the person on whose behalf the same shall be lodged, and a description of the land to which such caveat relates, and his interest therein, and the name and description of the persons or person against the registration of whose title the same shall be directed, and shall be otherwise in such form as the registrar shall require, and shall be signed and left at the office by the person on whose behalf the same shall be lodged, or by his solicitor, and contain an address, in Great Britain, at which notice shall be served, and if any caveat shall be signed by a solicitor, his address shall also be inserted. Every caveat shall be renewed after the expiration of five years." (20).

92. The following is a form of caveat:—

LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53.

I, E. F., of &c. [gentleman], have [or claim to have] [here insert the estate or interest in the land which the cautioner has, or claims to have], in the estate called —, in the parish of —, in the county of —, consisting of the following farms, viz. — [or all that house, No. &c., as the case may be], and of which —, of —, is now in possession [or receipt of the rents and profits], and am entitled to notice of any application that may be made [by —, of —, in the county of —], for registration of the title to the said estate, or any part thereof [or the said house, or land, as the case may be.]

My address for service of notice is —, in the county of —. Dated, &c.

[Signature of the cautioner or his solicitor.]

93. The 38th section of the act provides that no registration shall be made until notice has been served on the cautioner to appear and oppose such registration, and ten days have expired since the date of the service of such notice, or until the cautioner has entered an appearance, which may first happen.

94. The following is the form of notice:—

No. —. LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of A. B.

Take notice, that A. B., of &c., has applied for registration of the title to the [insert description of land as in caveat], and if you intend to appear and oppose such registration you are to enter an appearance for that purpose at the office of Land Registry, No. 34, Lincoln's-inn-fields, in the county of Middlesex, before the expiration of ten days from the day on which you are served herewith.

Dated, &c.

[Signature of the applicant or his solicitor.]

To X. B., of &c.

This notice must be prepared, settled, and served, and the service verified, in like manner as the other notices hereinbefore provided for.

95. The 39th section of the act provides for the payment of compensation by a cautioner lodging a caveat without reasonable cause; and the 40th section provides that a caveat shall have no effect except to entitle the cautioner to notice.

Land Certificate upon first Registration.

96. Every registered owner is entitled to a land certificate, being a copy from the register of all the existing entries thereon relating to his estate up to the date of such certificate.

97. The application for a land certificate must be in writing, signed by the applicant or his solicitor, and may be in the form given infra. [See No. 197.]

98. The fees on land certificates are payable on the following scale, viz.—

Property not exceeding 1000 <i>l.</i> in value . . .	£0 7 0
If above 1000 <i>l.</i> and not exceeding 5000 <i>l.</i> . .	0 15 0
If above 5000 <i>l.</i> and not exceeding 10,000 <i>l.</i> . .	1 0 0
If above 10,000 <i>l.</i> and not exceeding 20,000 <i>l.</i> . .	2 0 0
If above 20,000 <i>l.</i> and not exceeding 40,000 <i>l.</i> . .	3 0 0
If above 40,000 <i>l.</i>	5 0 0

99. The following is a form of a land certificate:—

OFFICE OF LAND REGISTRY.—LAND CERTIFICATE.

The Register of Estates with an indefeasible Title.

Reference No. 40, vol. 1, p. 80.—Record of Title.

No. 40.

Date of Entry.	Description.
February 20, 1864.	The hereditaments called or known as Whitescres, in the parish of A., in the county of B., delineated on the map, No. 40, deposited in the office of Land Registry, as part of the description of the same hereditaments, and thereon edged with red. Together with the mines and minerals under the same.

The Record of Title to Lands on the Register.

Reference No. 40, vol. 1, p. 50.—Register of Estates.

No. 40, vol. 1, p. 40.—Register of Mortgages and Incumbrances.

No. 40.

Date of Entry.	Estates, Powers, Interests, &c.
February 20, 1864.	Richard Roe, of Cheapside, in the city of London, Esq., is entitled in fee-simple in possession. Richard Roe was not married before the year 1834, and has by deed, dated since that year, declared that his widow shall not be entitled to dower.

The Register of Mortgages and Incumbrances.

Reference No. 40, vol. 1, p. 50.—Register of Estates.

No. 40. No. 40, vol. 1, p. 80.—Record of Title.

Date of Entry.	Charges and Incumbrances.
February 20, 1864.	By deed dated the 14th March, 1863, the hereditaments were granted to John Doe, of Margate, in the county of Kent, Esq., in fee, to secure 3000 <i>l.</i> and interest.

A copy of the above-mentioned map is attached hereto.

It is hereby certified, that the above-mentioned hereditaments are registered with an indefeasible title.

Delivered to the above-named Richard Roe, at his request, this 7th day of March, 1864.

(L. S.)

[Signature of the Registrar.]
(Certified copy of map annexed).

AS TO LEASEHOLD ESTATES.

100. The 26th section of the act enacts, that "leasehold estates, namely, lands demised for terms of years of which fifty years are still to come and unexpired, or demised for lives or for years determinable with

lives, and in which two lives at least are still subsisting, may be registered with an indefeasible title in a similar manner, and subject to the same or similar directions and rules of proceeding as are herein contained with respect to freehold lands; such application may be made by persons having such estates and interests in the leasehold estates as are similar or correspondent to the estates and interests of the persons entitled to apply for the registry of freehold land; no indefeasible title shall, in the case of a leasehold, extend to the title of the lessor or grantor of the same; such further directions shall be observed with regard to leasehold estates as shall be given from time to time by General Orders."

101. "Notice of every application to register a leasehold estate shall, where practicable, be given to the lessor or grantor, or his representative, and such notice shall be in such form, and shall be served in all respects, as the registrar shall direct." (19).

102. The mode of proceeding for the registration of the title to leasehold estates will be the same as that before pointed out as to registration of indefeasible titles. As, however, no indefeasible title will extend to the title of the lessor or grantor, it will not be necessary to deduce such last-mentioned title. The notice to be given to the lessor or grantor, or his representatives, should be prepared, settled, and served, and the service verified in like manner as the other notices before provided for.

AS TO TITLES NOT INDEFEASIBLE.

103. The form of the application for registration without an indefeasible title will be the same as that of the application for registration with an indefeasible title, *mutatis mutandis*. The evidence required by the 25th section of the act, and any other evidence by means of which the applicant purposes to satisfy the registrar of his title to be registered, should be lodged in the office. The before-mentioned provisions for ascertaining and identifying the lands will be applicable. No advertisements, however, of the intention to register will be necessary. It may be observed, with respect to applications for registration without an indefeasible title, that the registrar, in defining the period at which an indefeasible title shall arise, must be guided by the length of time during which the applicant shall shew that he has, or those through whom he claims have, been in possession as owner or owners in fee-simple.

104. The 25th section of the act is as follows:—

"Application for registration without an indefeasible title may be made by any person, subject to the following conditions:—

1. The applicant shall prove to the satisfaction of the registrar that he, or some person under whom he claims, has been in the actual enjoyment or receipt of the rents and profits of the land as owner of the fee-simple thereof, continuously and without interruption, for a period of ten years immediately preceding the time of such application;
2. The last deed or will (if any) under which the applicant derives title shall be produced to the registrar:

If the applicant claims as heir-at-law, evidence shall be given that the ancestor was in the enjoyment of the estate as owner thereof at the time of his decease:

3. The rules above enacted as to the description of the land to be registered shall apply, and the registrar shall adopt the same course, and take the same proceedings, for the purpose of ascertaining the accuracy of the description of the lands and of the boundaries thereof, as are here-

inbefore directed with respect to registration with an indefeasible title:

4. A statutory declaration shall be made by the applicant and his solicitor or agent, or certificated conveyancer, and, if necessary, any other person whose evidence may be deemed necessary by the registrar, that they respectively believe the applicant to be, either alone or jointly with other persons, to be named and described (and subject to any qualification, condition, or exception which shall be stated), well entitled to the fee-simple of the lands proposed to be registered:
5. If the land be registered, the registrar shall, in the record of title, define the time, event, or circumstances from and after which an indefeasible title shall attach: when the time has arrived, the event happened, or the defined circumstances exist, a judge of the Court of Chancery may, upon proof thereof, and if there be no other objection, after such and the like notices as are hereinbefore required in case of an application for registration of a title as indefeasible shall have been duly given, direct a transfer of the land to the register of estates with an indefeasible title; and thereupon the registrar shall make up a proper record of the title to such land, and the applicant and other persons named in such record of title shall have the same estates, rights, and privileges as if the land had been registered with an indefeasible title:
6. Subject to the enactments herein contained, the registration of any person as owner of land without an indefeasible title shall not prejudice any estate, right, or interest created or existing at or before the date of such registration."

REGISTRATION OF TITLE THROUGH THE COURT OF CHANCERY.

105. The act (part 2) contains provisions for the simplification of title to land on sale by the Court of Chancery; and sect. 57 empowers the court by its order vesting the land in a purchaser to direct the entry on the register of the name of the person entitled as the proprietor of the land with an indefeasible or qualified title, as the case may be.

106. "Where any order of the Court of Chancery shall direct the registrar to enter the name of any person on the register as the proprietor of any land with an indefeasible or qualified title, the person requiring such entry shall make an application in writing to the registrar for such purpose, and lodge the same in the office, together with an office copy of the order referred to in the 57th section of the act, and all other documents (if any) necessary to complete the registration; and any such application shall be supported by such other evidence (if any), and be made in such manner and form as the registrar shall require." (21).

107. The following is a form of such an application:—

LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of A. B.

A. B., of &c., hereby requires the registrar of the office of Land Registry to enter his name on the register as the proprietor of the lands referred to in the order, an office copy of which accompanies this application, with an indefeasible [*or qualified*] title, in pursuance of the direction of the Court of Chancery.

Dated, &c.

[Signature of A. B. or his solicitor.]

108. The Declaration of Title Act (25 & 26 Vict. c. 67) provides for a judicial declaration of title to

land being made by the Court of Chancery, and sect. 21 of that act, and sect. 31 of the Transfer of Land Act, provide, in effect, that every such declaration of title may, at the option of the person obtaining the same, be registered as an indefeasible title under the latter act.

109. "The persons entitled and requiring to register a declaration of title under the 25 & 26 Vict. c. 67, shall make an application in writing to the registrar for that purpose, and lodge the same in the office, together with such documents as shall be necessary to complete the registration, and such application shall be supported by such evidence, and be made in such manner and form as the registrar shall require." (22).

110. The following is a form of application:—

LAND REGISTRY.

In the matter of the act of the 25 & 26 Vict. c. 53, and of the application of A. B.

A. B., of &c., being the person entitled to register the declaration of title made under the 25 & 26 Vict. c. 67, to the lands in the parish of —, in the county of —, referred to in such declaration, hereby requires the registrar of the office of Land Registry to enter the same land upon the register, as the title to the same has been declared by the Court of Chancery.

Dated, &c.

[Signature of A. B. or his solicitor.]

(To be continued).

COURT OF QUEEN'S BENCH.

TRINITY TERM, 29 VICTORIA.—June 4.

This Court will, on Wednesday, the 13th, and Thursday, the 14th days of June, instant, and also on Wednesday, the 20th day of June, instant, and the three following days, hold sittings, and will proceed in disposing of the cases in the New Trial, Special, and Crown Papers, and any other matters then pending; and will also hold a sitting on Saturday, the 7th day of July next, for the purpose of giving judgments only.

BY THE COURT.

JUDAH PHILIP BENJAMIN.—On Wednesday evening the Benchers of the Hon. Society of Lincoln's Inn called to the bar no less than twenty-nine candidates for forensic honours. Amongst these was Mr. Judah Philip Benjamin, of the late Confederate States, so-called, of America. A number of the members of the English bar regard the circumstances connected with the call of Mr. Benjamin with feelings of the strongest disapprobation. Mr. Benjamin has had nearly the whole of his terms remitted by the Benchers of the inn, and is, by his unreasonable call, although a novus homo in the profession, made to lead, as it is expressed—that is, to enjoy pre-audience over distinguished members of our universities, who have been keeping their terms for years. Why this has been done the public must be left to judge. What peculiar claim Mr. Benjamin can have upon the Benchers of Lincoln's Inn it would be difficult to ascertain. Mr. Judah Philip Benjamin was published as a barrister in the usual form by Sir Edward Ryan, and the presence of the gentleman who was so lately in rebellion against the lawful Government of the United States excited a good deal of emotion and curiosity. Vice-Chancellor Sir W. Page Wood was present at the ceremony. After his call, Mr. Benjamin dined at the student's table, and at the close of the dinner—the new-made barristers being called up by name to the bar table in order to take dessert in the private room of the Benchers—upon the name of Mr. Benjamin being called there was considerable applause, not, however, unmingled with very distinct hisses.—*Star*.

BOOKS RECEIVED.

Bracton and his Relation to the Roman Law. A Contribution to the History of the Roman Law in the Middle Ages. By Carl Güterbock, Professor of Law in the University of Königsberg. Translated by Brenton Coxo. 8vo., pp. 192.—Philadelphia: J. B. Leppincott & Co. London: Trübner & Co.

The Law relating to Boundaries and Fences. By Arthur Joseph Hunt, Esq., of the Inner Temple, Barrister-at-Law. 12mo., pp. 280.—Butterworths.

The Law of Wills, as administered in the Court of Probate in England. By F. A. Inderwick, Esq., of the Inner Temple, Barrister-at-Law. 8vo., pp. 203.—Maxwell.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, May 31.

LAW OF CAPITAL PUNISHMENT AMENDMENT BILL.

The House went into committee on this bill.

Clauses 1 to 3 were agreed to.

On clause 4, providing that murders should in future be divided into two classes or degrees,

Earl Grey said, that he thought if murder was to be punished with death, it was not desirable to have two degrees of murder. The better plan would be to alter the definition of murder, so as to confine it to those crimes for which capital punishment was inflicted. He saw no objection to having two kinds of manslaughter, but there ought to be no mistake as to the character of the crime which was punished with death. He moved an amendment in accordance with these views.

The Lord Chancellor said, that the provisions in the bill had been adopted by several of the United States, and was approved of by the majority of the English judges. He did not think that it would be advisable to include under the title "manslaughter," offences so very different in character as those which would come under that denomination, if it were made to embrace all the offences described in the bill as "murders in the second degree." He must, therefore, oppose the amendment, thinking, as he did, that it was desirable that the commission of grave offences should incur the stigma which attached to the word "murder."

Lord Longford supported the amendment.

Earl Russell said, that he supported the bill as a step towards the abolition of capital punishment, which he thought to be desirable as soon as public opinion was prepared for it.

The Duke of Richmond thought that the clause should be retained in its present form. The great advantage of having "murders" of two classes was, that "murder" and "manslaughter" were kept distinct. It would, moreover, be very difficult to frame a new definition of manslaughter, which should include all the offences which came under the denomination of "murder in the second degree" by the present bill. It was most desirable that sentence of death should never be pronounced, except when it was likely to be carried out; and this end would be attained by affixing that punishment only to offences known as "murder in the first degree," or, in other words, real murders.

Lord Romilly was in favour of the amendment. One great object was to induce the public to attribute a great amount of culpability to murder. That object would be defeated if murder was divided into two degrees, the second one including offences which no one deemed murder. It would be far better to have two degrees of manslaughter. Let murder be something always horrible, and always held up to the detestation of the public.

The Lord Chancellor thought that there were many cases which should be stamped with the designation of murder, although they might not be punishable with death. That punishment should be confined to cases where there was an intention to take life, or to inflict such grievous bodily injury that death would probably ensue.

Earl Grey did not propose to make the smallest substantial difference in the law as it now stood. All that he suggested was, that "murder in the second degree" should be

called "aggravated homicide;" and he must say that this seemed to him a better classification of crime than the one proposed by the bill. If he had any doubt as to the propriety of the amendment, it would have been removed by the declaration of the First Lord of the Treasury that he regarded the bill as it now stood as a step towards the abolition of capital punishment.

The committee then divided on the clause—

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According to the rules of the House, the clause was therefore negatived.

The Lord Chancellor said that, after the division which had just taken place, it would be necessary to have the language of the bill carefully considered, in order to fit the new definition of crimes which would be introduced by the amendment of Earl Grey. He should, therefore, move the adjournment of the debate to that day week.

After a brief conversation, the debate was accordingly adjourned.

COMPANIES ACT (1862) AMENDMENT BILL.

Lord Stanley of Alderley moved the second reading of this bill, the object of which, he said, was to enable companies to divide shares of a large denomination into an equivalent number of smaller value.

Lord Redesdale opposed the bill, which, he said, would alter the character of many companies to a very serious extent. It was a very different thing whether the shares of a company were of £100. or of 10s., for the same class of persons who would hold the one would not take the other. He did not think that the bill was well drawn, or that it would work in its present form.

After some explanations from Lord Stanley of Alderley, The bill was read a second time.

HOUSE OF COMMONS.—Wednesday, June 6.

REAL ESTATE INTERTACY BILL.

Mr. Locke King, in moving the second reading of this bill, explained that its object was to assimilate the law respecting the distribution of intestate real estate to the law respecting the distribution of intestate personalty. Justice, common sense, and sound commercial principle were all in favour of such a change in the law; and he had no doubt that a Parliament elected upon the principles of the present one would give the question a favourable reception. If a man possessed of personal property died without making a will, one-third of this property went to his widow and two-thirds to the children; or, in the event of his having no children, one-half went to the widow and the other half to the next of kin. Now, if this was just in the case of personal property, why should not the same rule be followed in the case of real estate. If a man died intestate who was possessed of real estate, the whole of it went to the heir-at-law, and his widow and remaining children might be left totally unprovided for. In actual practice, it was not the fact that the widow was entitled to a third, for in almost all cases her right to dower is barred. It was only in the case of small estates that the provisions of the bill would apply; for invariably, he might say, large estates were the subject of settlements. But in the case of a man dying possessed of a cottage which had been purchased with a wife's fortune, if he died without making a will and without children, the wife took only one-third of the annual letting value of the cottage during her life, whereas it might be a nephew got the bulk of the property. It might be said that this bill would abolish the law of primogeniture; but he maintained that the law of primogeniture had been abolished at the close of the feudal times, and more especially by an act in the reign of Henry VIII.; so that, in point of fact, there was no law of primogeniture existing in this country. Another argument against the bill was that it would injuriously affect the interests of the aristocracy; but that argument was not better founded than the one about primogeniture, seeing there was nothing in the bill which could at all injure the aristocracy. When, some years ago, he had proposed that mortgaged estates should be made to bear their own burden, the thin end of the wedge argument was used against him; but since then he had heard no complaint of injustice having been done. The hon. member concluded by moving that the bill be read a second time.

Mr. Beresford Hope, in opposing the motion, referred to the history of the measure in former sessions, and showed that in a moribund Parliament it was defeated by a majority of 271 against 76. He could only account for the resuscitation of the measure in the present session upon the supposition that there was a new Parliament, which might be better disposed towards it than when it was condemned by the shrewd practical common sense of Lord Palmerston, and the judicial, philosophical mind of Sir George Lewis. It was said that there was no law of primogeniture existing at present. Nobody ventured to assert there was such a law of primogeniture as existed in past times, or at present in Japan. But, nevertheless, there was a moderate law of primogeniture which this bill attacked. He thought there was not such an accumulation of land in a few hands as was supposed by some persons; at all events, he did not think an impartial view of the matter could result in any other conclusion. He maintained that the law as regarded the inheritance of property in this country worked well, and that they should be slow to tamper with it. He regarded the land of the country in the light of the bullion in the Bank of England, which should not be made too easily convertible, as it formed the great backbone of the country, and should be kept together against a time of trouble. He thought the effect of the bill would be mischievous upon gentry estates, that it would set children against their parents, and would unsettle a custom which had remained intact from time immemorial. He begged to move that the bill be read a second time that day six months.

Mr. Goldney seconded the amendment, because he believed the bill would be productive of the most disastrous consequences.

The Attorney-General thought they were bound to look at the law as a whole, and not to any hardships which it might have caused to particular individuals, and ask themselves whether the general effect of the law was such as to call for a change. He thought there was no ground for saying that the present law was productive of injustice. It was simply the result of a public policy, which was just as satisfactory for its purpose as any other arrangement of a like nature, when considered in connexion with the long-established usages of the country. He did not think the law was injurious to the younger sons of the landed gentry. Quite the contrary. Instead of, as in continental countries, the younger sons living upon some common fund, in England the younger sons were sent into the world to work out their own fortunes, where they mingled with the people, and oftentimes themselves became the owners of land. He thought that until the injustice of the law was more clearly established there should be no attempt to alter.

Mr. Bright had listened to the speech of the Attorney-General, but he had often heard the same speech from him. He did not despair of hearing the hon. and learned gentleman make a speech the very opposite of it. The Attorney-General had told them that he saw no injustice in the present law. He should like to ask him whether he would apply the same law to personal property, and assert that it would produce no injustice? When the learned gentleman defended the law upon the ground of public policy, then he was more in accordance with the facts of the case. It was, no doubt, essential to maintain the law of primogeniture as long as the principle of a hereditary peerage was continued. But as he preferred morality and justice to all the peerages in the world, he should not like to tie up the peerage by a law so immoral and unjust. The Attorney-General had told them that the system worked well for younger sons. He remembered on one occasion, when he made a speech on this subject in Birmingham, that a younger son came to him, and used language which he feared was not quite parliamentary; but he thought the Speaker would excuse him if he quoted it. This younger son came to him, and said, "I read your speech, and agree with every word of it. There is no doubt that we younger sons are damned badly used." There was an interesting passage in the biography of Jefferson, who had been twice President of the United States; he had abolished the law of primogeniture in his native State of Virginia, and remarking upon the results in after years, he said, "If there were fewer carriages and six, there were a great many more carriages and pairs." He did not suppose the bill of his hon. friend would pass this session, but the time would come when the wants of the country would require an alteration of the present law.

Mr. *Henley* said it was now quite clear that the bill before the House was not to be looked upon by itself, because the hon. member for Birmingham had declared most distinctly that he supported the measure for the purpose of bringing about a fixed change in the law that he adverted to so powerfully in his speech. The House must, therefore, be cautious how it dealt with this question, and take care to consider all the circumstances connected with the bill before giving any decision upon it. He objected to the proposal of the hon. member for East Surrey, because it was inapplicable to the peculiar species of property with which it professed to deal. He strongly objected to it, moreover, because it would inflict great hardship, injury, and injustice upon the small cottage holders of the country.

Mr. *Neate* would not recommend Parliament to pass any measure which would lead to the minute division of landed property. This system of division already existed to an excessive degree. It was the source of many evils, and he hoped it would not be further extended. He supported the bill because he believed it would be most conducive to the peace, happiness, and morality of families. Landowners should be allowed to dispose of their estates as they thought proper. The law of primogeniture arose out of, and was intimately associated with, feudalism, and had undoubtedly served its purpose. Feudalism had passed away, and it was but right that what grew out of it, and was supported by it, should also be abolished.

Mr. *Whiteside* thought what had been said upon this subject only shewed how difficult a thing it was to supply to the country a better law and constitution than those which we now possessed. The hon. member for Birmingham had spoken with great force in favour of doing away with the law of primogeniture; but his arguments were, as might have been expected, of a one-sided character. The hon. member, while denouncing the law, had forgotten to prove that it was unjust and immoral. He forgot, moreover, that had he proved his case, and shewn that the law was unjust, immoral, and pestilent, it would have also proved that the English nation was immoral, and was incapable of judging of what was right, inasmuch as it had retained for centuries a law that was fraught with evil. The hon. gentleman had, as usual, pointed to America in support of his theory, but they had surely little encouragement to look to that quarter for guidance in such a matter, considering what had recently happened there, and what the condition of that country now was. The hon. member had triumphantly instanced Virginia, where Mr. Jefferson had abolished the law of primogeniture, but he (Mr. *Whiteside*) did not see that that State had been greatly benefited by this procedure. Nay, he had no doubt that Virginia owed her present unsatisfactory condition to the abrogation of that law. He argued that the people of this country would not have been the great people they were if it had not been for the existence of this statute. He hoped his hon. friend the member for Birmingham would yet see the error of his ways, and acknowledge that there was nothing so good as the old constitution of the country.

Mr. *E. James* said, judging from what they had heard, one might imagine that the aristocracy was to be ruined and the peerage destroyed by the operation of this bill. Such, however, was not the case. The object of the bill was simply this:—The law as it at present stood enabled every man to dispose of his real and personal estate in whatever manner he thought proper. The measure of the hon. member for East Surrey sought to enact, that in the event of a man not having made any disposition of his property by will, that it should be disposed of in accordance with the dictates of sound policy and justice. The bill sought to remedy certain evils that existed in the law, and he hoped it would receive the sanction of Parliament.

Lord *J. Manners* said, before going to a division, he should like the hon. member for East Surrey to answer this question. Suppose a great landed proprietor being possessed in fee-simple died intestate, would his estate, the castle or property, be sold and divided, as the provisions of this bill would seem to indicate?

Mr. *L. King* was surprised that such a question should have been put to him by the noble Lord. The bill did not contemplate any difference between the rich and the poor. If it should happen that the owner of a castle died intestate, his estate would of course be divided.

Mr. *Hibbert*, amid cries of "Divide," suggested whether

the hon. member for East Surrey would not accomplish his object by allowing all estates that would be affected by the bill to be registered as coming under it.

Mr. *Ewart* held that the measure was, in effect, but carrying out the great principles of free trade, which had so long governed the policy of this country.

Sir *J. Walsh* thought the House should hear an expression of opinion from some Cabinet Minister upon the bill under discussion.

Mr. *Barrow* remarked, that the general feeling among the freeholders of the country was against cutting up land into ribands.

The *Chancellor of the Exchequer* rose, not to address the House upon this subject, but merely in answer to the appeal of the hon. member for Radnorshire. He (the Chancellor of the Exchequer) was of opinion, that no sufficient reason had been advanced for passing such a bill as that proposed. He was very far from regarding the present state of the law as perfect, but the bill now under notice would not make it so. The Attorney-General had explained his views on the matter with force and clearness, and with these Government fully coincided.

The House then divided.	The numbers were—
For the second reading	84
Against	281

Majority against	197
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The bill was accordingly lost.

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IN establishing the doctrine of the separate estate of married women, equity cannot be said to have observed its own rule, of following and supplementing the law. It has boldly set up in respect of separate property a code of rules directly antagonistic to the common law, and in creating this great anomaly it has not escaped lesser anomalies; so that, notwithstanding the number of cases in which the limits and application of the doctrine have been discussed, there are many questions still unsettled, and many points of which, if they can be said to be settled, the grounds of decision remain uncertain.

In the recent case of *Shattock v. Shattock* (12 Jur., N. S., part 1, p. 405), the question in *Vaughan v. Vanderstegen* (2 Drew. 165) was again discussed upon the following state of facts:—On the marriage of E. Shattock with W. Rowcliffe in 1807; real and personal property was vested in trustees, upon trust for the separate use of the lady for life, and then upon certain trusts for her issue, and in default of issue, upon such trusts as she, notwithstanding coverture, should by deed or will appoint; and in default of appointment, in trust, as to the real estate for her in fee, and as to the personality, for her next of kin. In the following year the husband and wife executed a deed of separation, and the lady settled an annuity of 150*l.* on her husband. In 1820, Mrs. Rowcliffe appointed 600*l.*, part of the settled property, in favour of her brother John Shattock. She died in 1823 without issue, having by her will appointed the remainder of the settled property, leaving her husband surviving. In the following year the suit of *Bridge v. Rowcliffe* was instituted for the purpose of carrying into effect the trusts of the settlement and will, and in that suit provision was made for the payment of the annuity to W. Rowcliffe. On his death in 1864, the fund set apart for his annuity was liberated, and then S. F. Bridge, the executor of Mrs. Rowcliffe's will, claimed payment of 14*l.* 15*s.*, under a promissory note for that sum in the ordinary form, given to him by Mrs. Rowcliffe in 1822, on the ground that the appointment made the estate assets for the payment of the appointor's debts, as it would have done if she had been a man. (*Jerney v. Andrews*, 6 Mad. 264.) The Master of the Rolls disallowed the claim, and, not admitting that the authorities were not all consistent, based his decision on the following propositions:—The foundation of the doctrine as to separate estate is, that a married woman is a feme sole as regards her separate estate, and can act as such, but cannot otherwise than with regard to her separate estate enter into a contract. Her contract is nothing unless it has reference, directly or indirectly, to her separate estate. Equity considers that every engagement in writing for the payment of money made by a married woman who has separate property implies a charge on her separate estate, because unless it means that it means nothing; and though a general verbal contract may

not involve the same implication, yet an express verbal contract for the payment of a debt out of her separate estate is sufficient. "It is," said Lord Romilly, "on this principle that every bond, promissory note, and promise to pay given by a married woman has, for the reasons I have already stated, been held to be a charge made by her on her separate estate—that is to say, it is a disposition of so much of her property, the whole of which, if she pleased, she might give away. . . . It is clear," added his Lordship, "that this implication of a charge cannot exist in the mere case of simple contract debts, without one word said or written to shew that the separate property is to be bound." His Lordship then proceeded to comment on the cases of *Johnson v. Gallagher* (7 Jur., N. S., part 1, p. 273) and *Vaughan v. Vanderstegen* (2 Drew. 165, 368). In *Vaughan v. Vanderstegen*, Sir R. T. Kindersley, V. C., on the original hearing, decided that a married woman entitled to the income of property for her separate use for life, with a power of appointment of the corpus by will, and having, on the representation that she was a married woman, obtained a loan on the security of a deed purporting to be a mortgage of other property—which was inoperative by reason of her coverture—did not, by exercising the power of testamentary appointment, subject the settled property to the repayment of the loan. But on a rehearing, his Honor decreed payment of the loan out of the appointed property, on the ground that though a married woman cannot make a contract, she may commit a fraud, and thereby subject her property to make good the consequences of that fraud. Some of the Vice-Chancellor's remarks on the general doctrine, which he discussed very elaborately, are worthy of attention. His Honor considered that there was a clear distinction between property limited to the separate use of a married woman and property merely subjected to her appointment by deed or will, or by will only—the distinction being, that the power gives her no property in the subject-matter, and no general right of disposing of it in any manner or by any means she pleases, but only a right of disposition in the manner, by the means, and in the form prescribed by the power. But as the Vice-Chancellor considered that a married woman, though incapable of contract, except in respect of her separate estate, was capable of fraud, and liable to be visited with the consequences of that fraud, he held that the property appointed by her will was applicable to indemnify the mortgagees against the fraud which had been practised on him; just as, in *Savage v. Foster* (9 Mad. 35), a married woman, having falsely represented that an estate in which she had the reversion in fee belonged to her mother absolutely, was, on her becoming a widow, compelled to convey the estate accordingly. The doctrine upon which the Vice-Chancellor proceeded in this case may be shortly stated thus:—A married woman is incapable of contract, except with reference to her separate estate; but she is capable of fraud, and though not personally answerable during her coverture for her fraud, would become answerable on the death of her husband; and if she died in his lifetime, her assets, including property appointed under a ge-

neral power, would be answerable; consistently with that determination, his Honor held, in the same case, that another claimant, in respect of a debt contracted by the lady before her marriage, was entitled to payment out of the appointed property. The remedy against the wife was suspended during the coverture, but the obligation continued, and on her death was to be satisfied out of her assets. The decree was for payment out of, first, the separate estate, then the other personal estate not actually recovered by the husband before his wife's death, then the real estate not appointed, and then the appointed real estate.

The distinction is fine between the obligation to pay a debt and the obligation to make good a fraud. But it appears to us to be sound. It is clear that a married woman cannot contract a debt so as to render herself or her property or assets over which she has no power of disposition, liable for payment. If, being entitled to real or personal property not settled to her separate use, she borrows money or makes the most solemn contract to bind such property, her husband or her heir will, upon her death, take it free from any obligation to pay the debt or perform the contract—and the creditor or claimant has no just cause of complaint—because he was not deceived. But it does not follow that the disability which was intended for the protection of the wife should be available to enable her to commit a fraud with impunity.

If, however, Sir R. T. Kindersley rightly held that a married woman can by fraud charge her property, which she is unable to dispose of by other means, she was surely wrong in holding (as he did in *Wright v. Chard*, 5 Jur., N. S., part 1, p. 1334), that her separate estate, though liable to answer a simple assumpsit, is not liable to make good rents wrongfully received by her with knowledge of her want of title.

The question remains, whether there is any reason to distinguish between property which a married woman can dispose of by virtue of a trust for her separate use, and property which she can dispose of by virtue of a power. According to the Master of the Rolls, the general contract of a married woman operates only as having reference indirectly to her separate use by way of charge, and, therefore, the separate estate is not affected by a mere simple contract debt, without one word said or written to shew that the separate property is to be bound. If so, it follows, as his Lordship points out, that the charges must be paid, not *pari passu*, but in the order of priority. Now, this doctrine, that the general engagement of a married woman is a charge on her separate property, and is to be satisfied in the order of priority, is certainly contrary to several decisions and to many dicta. In *Hulme v. Tenant* (1 Bro. C. C. 16; 2 Dick. 560), the bond of a married woman and her husband was, in the lifetime of both, decreed to be satisfied out of the separate estate of the wife. Lord Thurlow treated it as a suit for a debt—not for enforcing a charge. "The question is," said he, "what sort of execution this Court will award against the separate property." Accordingly, in *Anon.* (18 Ves. 258; see 7 Jur., N. S., part 1, p. 280), it was held that, the claim being upon equitable assets, the separate estate should be distributed

among the creditors by specialty and by simple contract *pari passu*. The Master of the Rolls says, that this mode of administration seems to have been taken inadvertently. But that could not have been so; the matter must have been fully argued upon a claim for priority by specialty creditors, and the case is only shortly reported *ex relatione*. In *Owens v. Dickenson* (Or. & Ph. 48), Lord Oottenham, holding that a general charge of debts by a married woman's will on property which she had power to appoint extended to debts contracted during coverture, thus explained the doctrine as to the payment of debts out of the separate estate:—"It cannot be an execution of the power, because it neither refers to the power, nor to the subject-matter of the power; nor, indeed, in many of the cases has there been any power existing at all. Besides, as it was argued in the case of *Murray v. Burles* (3 My. & K. 209), if a married woman enters into several engagements of this sort, and all the parties come to have satisfaction out of her separate estate, they are paid *pari passu*. . . . Equity lays hold of her separate property, but not by virtue of anything expressed in the contract; and it is not very consistent with correct principles to add to the contract that which the party has not thought fit to introduce into it. The view taken of the matter by Lord Thurlow in *Hulme v. Tenant* (1 Bro. C. C. 21) is more correct. According to that view, the separate property of a married woman being a creation of equity, it follows, that if she has a power to deal with it, she has the other powers incident to property in general, namely, the power of contracting debts to be paid out of it." So in *Vaughan v. Vanderstegen*, Sir R. T. Kindersley rests the doctrine, on the injustice of allowing a married woman, after having deliberately and solemnly entered into an engagement for the payment of money, to continue in the enjoyment of her separate property without paying her creditors, and treats it as settled, that the creditors are to be paid *pari passu* as creditors, and not in the order of priority as mortgagees. Again, in *Johnson v. Gallagher* (7 Jur., N. S., part 1, p. 273), where the Lords Justices differed as to the liability of separate property to simple contract debts, Lord Justice Turner, after citing many authorities for the proposition, that all the debts and engagements of a married woman are to be satisfied out of her separate estate *pari passu*, said, that the Court gives execution against the property, just as a court of law gives execution against the property of other debtors, but the creditors have no lien or charge upon it; and he accordingly held, that they were wholly postponed to a specific charge or alienation for value.

The debts, then, contracted by a married woman during her coverture, are paid out of her separate estate as debts, *pari passu*, in the same manner as debts contracted by her before marriage are paid out of her general assets (including separate estate) (*Biscoe v. Kennedy*, 1 Bro. C. C. 17, note); and it is presumed, that in case of a deficiency of assets to pay both classes of creditors in full, the debts contracted before marriage would be marshalled upon the assets not consisting of separate estate. The debts con-

tracted during marriage are to all intents and purposes debts, to be paid out of such property as the debtor can make applicable to the payment. They are not to be paid out of property which she cannot dispose of as she thinks fit, any more than, if they were the debts of a man, they would be payable out of property not subject to his disposition. Why should they not be paid out of property which is appointed by the debtor's will in the case of a married woman, as well as in that of a man? (*Jenney v. Andrews*, 6 Mad. 264; *Fleming v. Buchanan*, 3 De G., Mac., & G. 976). Sir R. T. Kindersley relies on the distinction between property and power; but that does not prevent the property from becoming assets for the payment of debts in the case of a man, or, as his Honor himself decided, for the payment of debts contracted during coverture. There is more appearance of weight in another reason given by the same learned judge. In the case of a man, the appointed property is not applied until the general assets are exhausted. "The appointed property, in respect of its liability to his debts, stands, as it were, behind the shade and protection of that property of which he is the owner." In the case of a married woman, her real and personal property not limited to her separate use, and not appointed by her, is entirely exempt from liability to her debts, and would go to her heir and husband respectively, free from any obligation to pay them; while if her exercise of the power made the appointed property assets, the disposition made by her will would be defeated, in order to give effect to claims unavailable against her heir or personal representative. It seems to us, however, that this objection is conclusively answered by two considerations. First, the same anomaly occurs in the case of separate estate. The separate property, though expressly devised or bequeathed, is applicable in payment of debts, to the disappointment of the devisee or legatee, while the heir or husband takes the unsettled property without liability. Secondly, the objection is solely founded on the relative claims of two classes of volunteers, whose claims are of inferior importance in the contemplation of equity, to those of creditors; and it would be a greater hardship to leave a just debt unpaid than to reverse the usual order of priority between heirs and devisees, or personal representatives and legatees. On established principles of equity, the creditor has a claim on the appointed fund in priority to the claim of the legatee; and if the legatee can make a grievance out of the fact that another person takes by act of law property of the debtor which never was, and could not be made, available for the payment of the debt, the remedy would seem to be rather to give the disappointed legatee compensation out of that property than to satisfy him at the expense of one whose title is clearly paramount. But the grievance is purely fanciful, and does not call for any remedy.

For these reasons we submit that the question, whether a testamentary appointment by a married woman, in exercise of a general power, makes the appointed property assets for the satisfaction of her debts incurred during coverture, must be considered as still open to discussion.

Court Papers.

EQUITY SITTINGS, AFTER TRINITY TERM, 1866.

*Before the LORD CHANCELLOR.
At Lincoln's Inn.*

Tuesday.... June 19	First Seal.—Appeal Motions and Appeals.
Wednesday 20	Petitions and Appeals.
Thursday 21	
Friday 22	
Saturday 23	Appeals.
Monday..... 25	
Tuesday..... 26	
Wednesday 27	
Thursday 28	Second Seal.—Appeal Motions and Appeals.
Friday 29	
Saturday 30	
Monday July 2	Appeals.
Tuesday..... 3	
Wednesday 4	
Thursday 5	Third Seal.—Appeal Motions and Appeals.
Friday 6	
Saturday 7	
Monday..... 9	Appeals.
Tuesday 10	
Wednesday 11	
Thursday 12	Fourth Seal.—Appeal Motions and Appeals.
Friday 13	
Saturday 14	
Monday..... 16	Appeals.
Tuesday..... 17	
Wednesday 18	
Thursday 19	Fifth Seal.—Appeal Motions and Appeals.
Friday 20	
Saturday 21	
Monday..... 23	Appeals.
Tuesday..... 24	
Wednesday 25	
Thursday 26	Sixth Seal.—Appeal Motions and Appeals.
Friday 27	Petitions and Appeals.
Saturday 28	Appeals.

N.B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Tuesday.... June 19	First Seal.—Appeal Motions and Appeals.
Wednesday 20	Appeals.
Thursday 21	
Friday 22	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday 23	
Monday..... 25	Appeals.
Tuesday..... 26	
Wednesday 27	
Thursday 28	Second Seal.—Appeal Motions and Appeals.
Friday 29	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday 30	
Monday July 2	Appeals.
Tuesday 3	
Wednesday 4	
Thursday 5	Third Seal.—Appeal Motions and Appeals.
Friday 6	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday 7	
Monday..... 9	Appeals.
Tuesday..... 10	
Wednesday 11	

Thursday	12	Fourth Seal.—Appeal Motions and Appeals.
Friday	13	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday	14	Appeals.
Monday	16	
Tuesday	17	
Wednesday	18	
Thursday	19	Fifth Seal.—Appeal Motions and Appeals.
Friday	20	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday	21	Appeals.
Monday	23	
Tuesday	24	
Wednesday	25	
Thursday	26	Sixth Seal.—Appeal Motions and Appeals.
Friday	27	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday	28	Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Tuesday.... June 19	First Seal.—Motions and General Paper.
Wednesday 20	General Paper.
Thursday	
Friday	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday	
Monday..... 25	General Paper.
Tuesday..... 26	
Wednesday 27	Second Seal.—Motions and General Paper.
Thursday	
Friday	General Paper.
Saturday	
Monday July 2	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Tuesday..... 3	
Wednesday 4	General Paper.
Thursday	
Friday	Third Seal.—Motions and General Paper.
Saturday	
Monday..... 9	General Paper.
Tuesday	
Wednesday 10	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Thursday	
Friday	General Paper.
Saturday	
Monday..... 12	Fourth Seal.—Motions and General Paper.
Tuesday..... 13	
Wednesday 14	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Thursday	
Friday	General Paper.
Saturday	
Monday..... 16	General Paper.
Tuesday..... 17	
Wednesday 18	Fifth Seal.—Motions and General Paper.
Thursday	
Friday	General Paper.
Saturday	
Monday..... 23	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Tuesday..... 24	
Wednesday 25	General Paper.
Thursday	
Friday	Sixth Seal.—Motions and General Paper.
Saturday	
Monday..... 26	Petitions.
Tuesday..... 27	
Wednesday 28	Remaining Petitions, Short Causes, and Adjourned Summonses.
Thursday	

Notice.—At the Sittings after Trinity Term, the Master of the Rolls will hear Further Considerations in priority to Original Causes, until those set down before the 19th June have been disposed of, after which the Master of the Rolls will hear Further Considerations on every Monday during the sitting of the Court.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.
At Lincoln's Inn.

Tuesday.... June 19	First Seal.—Motions, Adjourned Summonses, and General Paper.
Wednesday 20	General Paper.
Thursday	
Friday	Petitions, Adjourned Summonses, and General Paper.
Saturday	
Monday..... 23	Short Causes, Adjourned Summonses, and General Paper.
Tuesday..... 25	
Wednesday 26	General Paper.
Thursday	
Friday	Second Seal.—Motions, Adjourned Summonses, and General Paper.
Saturday	
Monday..... 27	Petitions, Adjourned Summonses, and General Paper.
Tuesday..... 28	
Wednesday 29	Short Causes, Adjourned Summonses, and General Paper.
Thursday	
Friday	General Paper.
Saturday	
Monday July 2	Third Seal.—Motions, Adjourned Summonses, and General Paper.
Tuesday..... 3	
Wednesday 4	Petitions, Adjourned Summonses, and General Paper.
Thursday	
Friday	Short Causes, Adjourned Summonses, and General Paper.
Saturday	
Monday..... 9	General Paper.
Tuesday..... 10	
Wednesday 11	Fourth Seal.—Motions, Adjourned Summonses, and General Paper.
Thursday	
Friday	Petitions, Adjourned Summonses, and General Paper.
Saturday	
Monday..... 14	Short Causes, Adjourned Summonses, and General Paper.
Tuesday..... 16	
Wednesday 17	General Paper.
Thursday	
Friday	Fifth Seal.—Motions, Adjourned Summonses, and General Paper.
Saturday	
Monday..... 19	Petitions, Adjourned Summonses, and General Paper.
Tuesday..... 20	
Wednesday 21	Short Causes, Adjourned Summonses, and General Paper.
Thursday	
Friday	General Paper.
Saturday	
Monday..... 23	Remaining Petitions and Adjourned Summonses.
Tuesday..... 24	
Wednesday 25	Remaining Petitions, Short Causes, and Adjourned Summonses.
Thursday	
Friday	General Paper.
Saturday	
Monday..... 26	Sixth Seal.—Motions, Adjourned Summonses, and General Paper.
Tuesday..... 27	
Wednesday 28	Remaining Petitions, Short Causes, and Adjourned Summonses.
Thursday	

N. B.—At the Sittings after Trinity Term, the Vice-Chancellor will hear Further Considerations in priority to Original Causes. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir JOHN STUART.
At Lincoln's Inn.

Tuesday.... June 19	First Seal.—Motions and Causes.
Wednesday 20	Causes.
Thursday	
Friday	Petitions and Causes.
Saturday	
Monday..... 23	Short Causes and Causes.
Tuesday..... 25	
Wednesday 26	Causes.
Thursday	
Friday	Second Seal.—Motions and Causes.
Saturday	

Friday	29	Petitions and Causes.	Monday	25	
Saturday	30	Short Causes and Causes.	Tuesday.....	26	General Paper.
Monday	July 2		Wednesday ...	27	
Tuesday.....	3	Causes.	Thursday	28	Second Seal.—Motions and General Paper.
Wednesday ...	4		Friday	29	General Paper.
Thursday	5	Third Seal.—Motions and Causes.	Saturday.....	30	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Friday	6	Petitions and Causes.	Monday	July 9	
Saturday	7	Short Causes and Causes.	Tuesday.....	3	General Paper.
Monday.....	9		Wednesday ...	4	
Tuesday.....	10	Causes.	Thursday	5	Third Seal.—Motions and General Paper.
Wednesday ...	11		Friday	6	General Paper.
Thursday	12	Fourth Seal.—Motions and Causes.	Saturday	7	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Friday	13	Petitions and Causes.	Monday.....	9	
Saturday	14	Short Causes and Causes.	Tuesday.....	10	General Paper.
Monday.....	16		Wednesday ...	11	
Tuesday.....	17	Causes.	Thursday	12	Fourth Seal.—Motions and General Paper.
Wednesday ...	18		Friday	13	General Paper.
Thursday	19	Fifth Seal.—Motions and Causes.	Saturday	14	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Friday	20	Petitions and Causes.	Monday.....	16	
Saturday	21	Short Causes and Causes.	Tuesday.....	17	General Paper.
Monday	23	Causes.	Wednesday ...	18	
Tuesday.....	24	General Petition Day.	Thursday	19	Fifth Seal.—Motions and General Paper.
Wednesday ...	25	Causes.	Friday	20	General Paper.
Thursday	26	Sixth Seal.—Motions and Causes.	Saturday	21	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Friday	27	Remaining Motions and Petitions.	Monday.....	23	
Saturday	28	Remaining Petitions & Short Causes.	Tuesday.....	24	General Paper.

N. B.—At the Sittings after Trinity Term, the Vice-Chancellor will hear Further Considerations in priority to Original Causes. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

Before the Vice-Chancellor Sir W. P. Wood.

At Lincoln's Inn.

Tuesday....	June 19	First Seal. — Motions and General Paper.
Wednesday ...	20	
Thursday	21	General Paper.
Friday	22	
Saturday	23	Petitions, Short Causes, Adjourned Summonses, and General Paper.

N. B.—At these Sittings the Vice-Chancellor will hear such Further Considerations as are in the printed list in priority to Original Causes, and after the Sixth Seal Motions, Remaining Petitions, and Adjourned Summonses only will be heard. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

CIRCUITS OF THE JUDGES. (Mr. Baron BRAMWELL will remain in Town).

SUMMER CIRCUITS, 1866.	N. WALES.	S. WALES.	NORFOLK.	NORTHERN.	HOME.	WESTERN.	OXFORD.	MIDLAND.
	CJ Cockburn	B. Pigott	L. C. J. Erle LCB Pollock	B. Martin J. Lush	J. Willes B. Channell	J. Byles J. Blackburn	J. Keating J. Shee	J. Mellor J. Smith
Monday, July 9	.....	.....	.....	Durham	.....	Winchester	Abingdon	.....
Tuesday.... 10	.....	.....	.....	.....	Hertford	.....	.....	Warwick
Wednesday.. 11	.....	Haverfordw.	Oakham	.....	.....	.....	.....	.....
Thursday... 12	.....	[& Town	Leicester and	.....	.....	.....	Oxford	.....
Saturday... 14	.....	.....	[Borough	Newcastle &	.....	Salisbury	.....	Derby
Monday 16	Newtown	Cardigan	Northamptn.	[Town	Lewes	.....	Worcester &	.....
Wednesday.. 18	.....	Carmarthen	.....	.....	.....	.....	[City	.....
Thursday... 19	Dolgelly	.....	Aylesbury	Carlisle	Chelmsford	Dorchester	.....	Nottingham
Friday..... 20	.....	.....	.....	.....	.....	.....	Stafford	[& Town
Saturday... 21	.....	Brecon	.....	Appleby	.....	.....	.....	.....
Monday 23	Carnarvon	.....	Bedford	Lancaster	.....	Exeter & City	.....	.....
Tuesday.... 24	.....	.....	.....	.....	.....	.....	.....	Lincoln and
Wednesday.. 25	.....	.....	.....	.....	Maidstone	.....	.....	[City
Thursday... 26	Beaumaris	Presteign	Huntingdon	Manchester	.....	.....	Shrewsbury	York & City
Saturday... 28	Cardiff	.....	Cambridge	.....	.....	Bodmin	.....	.....
Monday 30	Ruthin	.....	.....	.....	.....	.....	.....	.....
Wednes., Aug. 1	.....	.....	Ipswich	.....	Guildford	.....	Hereford	.....
Thursday... 2	Mold	.....	.....	.....	.....	.....	.....	.....
Friday..... 3	.....	.....	.....	.....	.....	Wells	.....	Leeds
Saturday... 4	.....	.....	.....	.....	.....	.....	Monmouth	.....
Monday 6	Chester &	Chester &	Norwich and	.....	.....	.....	.....	.....
Tuesday... 7	[City	[City	[City	Liverpool	.....	.....	.....	.....
Wednesday.. 8	.....	.....	.....	.....	.....	.....	Glouc. & City	.....
Thursday... 9	.....	.....	.....	.....	.....	Bristol	.....	.....

OFFICE OF LAND REGISTRY.—GENERAL ORDERS, DIRECTIONS, AND FORMS.

(Continued from p. 238).

PART II.—PROCEEDINGS ON TRANSFERS AND OTHER DISPOSITIONS OF LANDS ON THE REGISTER.

Generally.

111. The 32nd section of the act provides, that after the registration of any land, "every estate or interest, use, trust, mortgage, charge, lien, right, or title," granted, arising, or coming into existence affecting the same, shall be registered.

112. And the 74th section provides, that "no unregistered estate or interest, contract or engagement, for the registration whereof provision is made by this act, shall prevail against the title of any subsequent purchaser for valuable consideration duly registered under this act."

113. The 63rd section of the act enacts, that "all registered land, and every part thereof, may be conveyed, charged, settled, dealt with, or affected in or by any of the following modes or dispositions; that is to say—

1st. By a statutory disposition in any of the forms described by the act:

2ndly. By indorsement on the land certificate:

3rdly. By deposit of the land certificate:

4thly. By any deed, will, judgment, decree, or instrument, by which such land, if not registered, might now, according to law, be conveyed, charged, settled, devised, dealt with, or affected. But no equitable mortgage or lien on registered land shall be created by a deposit of title deeds."

114. And the 33rd section, that, subject to the other enactments of the act, "the estates and interests of all registered proprietors shall remain subject to the existing law, and may be dealt with, assured, devised, and transmitted by descent or representation, according to the ordinary rules of law or equity."

As to Sales, Mortgages, and other Dispositions.

115. "In case of any transfer, conveyance, or transmission of the estate or interest of any person on the register by deed or will, or intestacy, or bankruptcy, or in any way whatever, or in case of any estate, or interest, use, trust, mortgage, charge, lien, right, or title being granted, declared, or arising, or becoming vested, or in any manner created, or having come into existence, with respect to any land on the register, or any mortgage, charge, or incumbrance thereon, any person desiring to register the same shall make an application, signed by such person or his solicitor, for that purpose, and such application shall state the name of the person on the register whose estate or interest may have been so transmitted, or affected, or dealt with, and the particulars of the property, and the number thereof on the register, and the nature of the new estate or other interest created, or declared, or arisen, or come into existence therein, and how the same has been created, or declared, or has arisen, or come into existence, and such further or other particulars as may be required by the registrar." (26).

116. "The registrar shall thereupon require such notices to be served and given, and such proof and evidence, as he shall think proper previous to registering such application." (27).

117. The following is a form of application:—

No. 40.

LAND REGISTRY.

C. D., of &c., having become entitled to, or interested in, the estate registered in the name of A. B., of &c., in [or in the charge on] the [or part of the] heredita-

ments in the parish of —, in the county of —, numbered 40 on the register of estates with an indefeasible title, in the manner following; namely [here state shortly the nature of the transferred or transmitted estate or interest], hereby requests the registrar of the office of Land Registry to register the same accordingly. Dated, &c.

[Signature of C. D. or his solicitor.]

118. "For the purpose of registration, the original document and an affidavit by an attesting witness, if any, or, if no attesting witness, by some person verifying the execution thereof by the registered owner, and an affidavit made by a solicitor (unless the registrar shall for any reason think proper otherwise to direct), identifying the person executing such document with the person named in the register, shall be left in the office." 4.

119. The following are sketches of transfers in statutory form, but the form may be modified or altered in expression to suit the circumstances of each case. The adoption of the statutory form is, however, not compulsory, except in dispositions completed at the office, under the 64th section of the act.

120. Form of a conveyance in fee:—

No. 40.

LAND REGISTRY.

Dated this — day of —.

I, A. B., of &c., in consideration of &c., paid to me [by C. D., of &c.] grant to C. D. and his heirs for ever [the description should, where practicable, be framed from the land certificate] [the hereditaments called or known as Whiteacres, in the parish of A., in the county of B., numbered 40 in the register of estates with an indefeasible title in the office of Land Registry, and delineated on the map No. 40 deposited in the said office as part of the description of the same hereditaments, and thereon edged with red, together with the mines and minerals under the same.]

[Signature and seal of A. B.]

Witness, E. F., of &c.

A solicitor of the High Court of Chancery [or a certificated conveyancer.]

121. Or where part only of any registered land is conveyed:—

No. 50.

LAND REGISTRY.

Dated this — day of —.

I, A. B., of &c., in consideration of &c., paid to me [by C. D., of &c.] grant to C. D. and his heirs for ever [the hereditaments in the parish of A., in the county of B., delineated on the map annexed hereto, and therein edged with red; together with the mines and minerals under the same, and which said hereditaments are part of the hereditaments numbered 50 in the register of estates with an indefeasible title in the office of Land Registry.] [Or (where there is no map annexed) the hereditaments in the parish of A., in the county of B., being that part of the hereditaments numbered 50 on the register of estates with an indefeasible title in the office of Land Registry, which is numbered (), on the map No. 50, deposited in the said office, together with the mines and minerals under the same.]

[Signature and seal of A. B.]

Witness, E. F., of &c.

A solicitor of the High Court of Chancery [or a certificated conveyancer.]

122. Or in the case of a mortgage:—

No. 40.

LAND REGISTRY.

Dated this — day of —. I, A. B. (of &c.), in consideration of &c., lent to me by C. D. (of &c.), grant to C. and his heirs [the hereditaments, &c.] [in either of the above forms, as the case may require], to secure to C. D. [his executors, administrators, or assigns]

the payment of the principal sum of &c., on the — day of —, and interest at £ — per cent. in the meantime half yearly. O. D. [his executors, administrators, and assigns] shall have power to sell, on default of payment of the principal or interest, or any part thereof respectively [add any restrictions on the exercise of the power of sale, or such covenants or conditions as the parties may agree on.] [See 23 & 24 Vict. c. 145, s. 11 et seq.]

[Signature and seal of A. B.]

Witness (as above).

123. Or in the case of a conveyance of land by indorsement:—

No. 40. LAND REGISTRY.

I, the within-named A. B., in consideration of &c., paid to me by O. D. [of &c.], do transfer to O. D. [and his heirs] the within-mentioned lands. Dated the — day of — 18—.

[Signature and seal of A. B.]

Witness (as above).

124. Or of transfer of charge by indorsement:—

No. 40. LAND REGISTRY.

I, the within-named C. D., in consideration of &c., paid to me (by E. F., of &c.), do transfer to E. F. [his heirs, executors, and administrators] the within-mentioned mortgage. [Add such power to sue and covenants, &c., as may be agreed on.]

Dated the — day of —, 18—.

[Signature and seal of C. D.]

Witness (as above).

125. The affidavit or statutory declaration required by the [See No. 18] 4th Order of 1864 should, where practicable, be made by the solicitor (if any) attesting the execution by the registered owner of the document to be registered, and may be in the form following, namely:—

No. 40. LAND REGISTRY.

I, G. H., of &c., a solicitor of the High Court of Chancery, do solemnly and sincerely declare that I am well acquainted with A. B., the person named in the deed [or document], dated the — day of —, marked A. [this will be the original deed or document, which must be marked in the usual way as an exhibit], now produced to me, that I saw him sign and seal, and, as his act and deed, deliver the same deed; that the name A. B. at the foot thereof is the handwriting of the said A. B.; and that the said A. B. is the same person as A. B. who is named in the record of title of the hereditaments numbered 40 on the register of estates with an indefeasible title in the office of Land Registry. And I make, &c.

Dated this — day of —.

126. "If the document proposed to be registered shall have been executed under a power of attorney, the power of attorney shall be produced, and, if the registrar shall so direct, left in the office, and the execution thereof by and the identity of the registered owner, and the execution of the document by and the identity of the attorney, must be verified in like manner as provided by the second [See No. 242] of these Orders." 5.

127. The following is a sketch of a power of attorney in statutory form on a transfer or mortgage, but the form may be altered in expression to suit the circumstances of each case:—

No. 40. LAND REGISTRY.

Dated this — day of —.

I, A. B. [of &c.], do appoint C. D. [of &c.], my attorney, to transfer to E. F. and his heirs [of &c.], ab-

solutely [or by way of mortgage, as the case may be], all my lands as entered and described in the register of estates with an indefeasible title, under No. 40, and my estate therein.

[Signature and seal of A. B.]

Witness, G. H., a solicitor of the High Court of Chancery, [or a certificated conveyancer.]

128. The affidavit or statutory declaration of the execution of the power of attorney, and of the identity of the principal as a registered owner, and of the agent as the person named in the power of attorney, and of the execution by such agent of the deed of transfer, should, where practicable, and so as to make one affidavit or declaration sufficient, be made by the solicitor (if any) attesting the execution of the transfer or mortgage by the agent; and such declaration may then be in the following form:—

No. 40. LAND REGISTRY.

I, G. H., of &c., a solicitor of the High Court of Chancery, do solemnly and sincerely declare that I am well acquainted with A. B., the person named in the [the power of attorney must be made an exhibit in the usual way] power of attorney marked A. now produced to me.

That on the — day of —, I saw the said A. B. sign, seal, and deliver the aforesaid power of attorney, and that the name "A. B." at the foot thereof is the handwriting of the said A. B.

That the said A. B. is the same person as A. B. who is named in the record of title to the hereditaments numbered 40 in the register of estates with an indefeasible title, in the office of Land Registry.

That I am well acquainted with E. F., the person named in the deed marked B. [this will be the deed of transfer or other document executed by the attorney, and must be made an exhibit] now produced to me, and that he is the same person who is named in the aforesaid power of attorney.

That on the — day of —, I saw the said E. F., as the attorney of the said A. B., sign, seal, and deliver the aforesaid deed marked B., and that the name E. F. at the foot thereof is the handwriting of the said E. F. And I make, &c.

Dated, &c.

[Signature of E. F.]

129. "No entry shall be made on the register of any document before the stamps in respect of the fees payable under the 127th section of the act have been affixed on some document sent to and lodged in the office with reference to the proposed registration, and all expenses payable under any General Order have been paid or provided for." 11.

130. The 127th section of the act provides (inter alia) for the fees payable on "the registration of transfers and transmissions of land and charges, and all other matters to be done by the registrar;" and such fees, so far as they relate to transfers and transmissions, have been fixed according to the following scale, viz:—

On transfers or transmissions not by way of mortgage 5s. up to 1000*l.* in value, and 1*s.* for each additional 500*l.*, or fractional part thereof; and on mortgages or charges, or transfer or transmission thereof, half the above fees, to be calculated on the amount or value of the charge.

Stamps for these fees must be affixed to the application for registration of the proposed dealing, or on the statement required by the 26th Order of 1862, to be left in the office.

131. In addition to the above fees the stamps payable under the Stamp Acts are in all cases payable, and by the 88th section of the act must be paid before

any dealing affecting registered land can be entered or noticed on the register.

132. "Where the value of the land on the register affected by any document proposed to be registered, and on the registration of which an advalorem fee is payable, does not appear from such document (the same not being a mortgage or charge), a statement in writing of such value under the hand of some competent person shall be left in the office, and the fee payable in respect thereof shall be thereupon paid upon the sum mentioned in such statement to be the value of the property. If such statement, however, shall not be satisfactory to the registrar as to the value, further proceedings shall be taken to ascertain the same under the [See Nos. 277, 278] 35th and 36th of the General Orders of the 1st October, 1862, and such further fee shall be paid as the registrar shall thereupon direct." 12.

133. The following is a form of a statement of value:—

No. —. LAND REGISTRY.

I, X. Y., of &c., hereby declare that I am well acquainted with the hereditaments comprised in the document dated the — day of —, 18—, proposed to be registered, being part of the estate registered under the No. —, and that the annual value of such hereditaments does not exceed £—, or the value for sale, £—/. Dated, &c.

[Signed X. Y.]

134. "A printed or written copy of every document proposed to be registered, and which by the act is required to be printed, must be left in the office; and when such copy has been examined with the original under the direction of the registrar, and the original has been stamped or indorsed as provided for by the [See Nos. 158, 279] 75th section of the act, the original shall be returned on a proper receipt being given for the same." 13.

135. The 86th section of the act provides that, for the purpose of registration, a printed copy of every deed or document [See No. 175] (not testamentary) affecting registered land may be delivered to or shall be obtained by the registrar at the expense of the person registering.

136. "All printed copies or memorials, or written copies or memorials not by the act required to be printed, left in the office for registration, shall be printed or written on paper of the same description and size as that on which bills in Chancery are required to be printed." 14.

137. "In case no printed copy of any document required to be printed shall be left in the office, a sufficient sum to meet the cost of printing shall at the time of leaving the document for registration be deposited in the office, the amount of such deposit to be settled by the registrar." 15.

138. In every case, before any document can be received for registration, a printed copy must be left with exact tracing or copy annexed (coloured where necessary) of map (if any) on original document; or, if no printed copy, a written copy and deposit for printing, and for stationer's charge for making or annexing tracing on copy when printed; or if no printed copy and no written copy, then a deposit for making such written copy, and for printing the same, and for tracing where necessary. The deposit for printing will be calculated at the rate of 6s. 8d. for the first ten folios or any less number, and 8d. a folio after the first ten folios, and for making the written copy at 6d. for the first four folios or any less number, and 1½d. a folio after the first four folios.

139. Before any document affecting the land comprised in any special land certificate, and the estate of

the registered proprietor described therein, is received for registration, within fourteen clear days from and after the date of such certificate, such certificate should be delivered up.

140. In every case search should be made for special land certificates (noted under the 70th section of the act), restraints on conveyance (under the 93rd section), and cautions (under the 96-98th sections); and if any such appear affecting the lands or interests dealt with, when the document is received for registration the official note of reference must be made expressly subject to such special certificate, restraint, or caution, unless in case of such special certificate the same is delivered up.

141. In every case where there is a subsisting special land certificate, the official note of reference should state whether such certificate has or has not been delivered up.

142. Where any restraint or caution subsists, all requisite notices, if any, should at once be given through the office, and should be left in the office for that purpose.

143. When the original document and the power of attorney (if any), and the statutory declaration, and the printed or written copies or deposit in respect thereof before referred to, have been left in the office, and all stamp and advalorem fees have been paid, the document will be considered as received for registration.

144. By the 76th section of the act, a deed or instrument received by the registrar is deemed to have been duly entered on the register, but without prejudice to the provisions as to special land certificates.

145. "When any document is received for registration, an official note of reference to the same shall be forthwith made in the record of title or register of incumbrances, as the case may require, which shall consist of a reference to the document, and the date when it was received; and the registration thereof, when completed, shall bear date in accordance with such note. But if the applicant shall not complete the registration within such time as the registrar shall fix for that purpose, the registrar may cancel such note." 19.

146. "Where a land certificate has been issued, to the possession of which the registered owner whose interest is proposed to be dealt with is entitled, the same must be produced to the registrar, or the non-production thereof satisfactorily accounted for before the registration of any proposed dealing with the property is completed." 16.

147. The printed copy of the document left for registration will be examined with the original. If no printed copy be left, the written copy (and when none left, one to be made for the purpose) will be sent to be printed; and when printed, the printed copy will be examined with the original, a tracing or copy of the map (if any) on the original, being first annexed to such printed copy.

148. In every case of a dealing with part only of land registered, unless the part dealt with can be accurately defined merely by reference to the original map deposited in the office, a map of the part so dealt with should, where practicable, be annexed and referred to in the conveyance or other document dealing with the same. This map may consist of a tracing from the original map, and may be procured from the aforesaid map department [see No. 34] under the charge of Colonel Leach. In every case the map should be on the same scale as the original map; and if not a tracing should, as to the outlines, be an exact copy from the original map.

149. "The registrar may keep the books of the register in such manner that the entries therein shall

from time to time shew only the estates, rights, powers, interests, charges, and incumbrances, exceptions, qualifications, and conditions, for the time being appearing from the register to be subsisting or capable of taking effect in the land registered under the number to which such entries relate, and for that purpose may from time to time withdraw from the register, by cancellation, any official note or entry." 18.

150. "In every case of a dealing with a part only of any land on the register, the registrar may require such maps of such land to be made and lodged in the office at the expense of the applicant as he may think fit [See Nos. 28, 38], and the 7th and 11th of the General Orders of the 1st October, 1862, shall in all respects apply to such maps." 21.

151. The 7th and 11th of the General Orders of 1862 provided, in effect, that all necessary maps should be made, and the boundaries of the land ascertained, in such manner as the registrar should direct.

152. "Where any registered land shall become divided by means of any absolute transfer, the registrar may make up a separate record of the particulars of the part so transferred; and the subsisting estates, rights, powers, interests, charges, and incumbrances, exceptions, qualifications, and conditions therein, distinguished by a separate number, and the part so transferred shall thenceforth be registered as a separate estate. In case of such separate registration, any map of the land deposited in the office shall, at the expense of the applicant, be altered in such manner as the registrar shall direct, so as properly to distinguish thereon the part of the land so transferred and separately registered." 20.

153. [See No. 47]. On any dealings by way of absolute transfer with part only of land registered, it is necessary that the original map in the office should be altered so as to distinguish thereon the part dealt with, and that a new map under a new number of the part dealt with should be deposited in the office. It is also necessary, to prevent complications in the entries in the register relating to either the original or new estate, that a separate record under a new number should be made up of such new estate. For these purposes the original map in the office, and the printed copy document, and the tracing or copy map thereon, will be sent to Colonel Leach, who will examine the same, and, unless the tracing or copy map on the printed copy document be an exact tracing or copy of the original map, will, at the cost of the transferee, make a tracing from such original map of the part dealt with. In that case the transferee must, at the like cost, forthwith procure such tracing to be signed or approved by the principal parties interested in the transaction, and return the same so approved to Colonel Leach.

(To be continued).

BOOKS RECEIVED.

Remarks on the late Report from the Select Committee on Bankruptcy, and the Bankruptcy Bill now pending. In a Letter to Lord Brougham and Vaux. By Arthur James Johnes, Esq., Judge of the Mid-Wales County Court. pp. 32.—Wildy & Sons.

Parliamentary Costs, Analysis, and Particulars of a Solicitor's Bill of Costs, in respect of obtaining a Railway Act. By W. Norris. 12mo., pp. 69.—P. S. King.

Institute of Jurisprudence. By William Austin Montcriou, Advocate of the High Court, Bengal. 8vo., pp. 232.—Calcutta: Drozario & Co. London: Macmillan & Co.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, June 7.

The Lord Chancellor brought in a bill, which was read a first time, to facilitate the enrolment in Chancery of the title deeds of land left for charitable uses.

LAW OF CAPITAL PUNISHMENT AMENDMENT BILL.

On the motion of the Lord Chancellor, this bill passed through committee pro forma, in order that it might be printed with amendments.

Lord Brougham made some remarks on the bill, but they were inaudible in the gallery.

CROWN LANDS BILL.

On the order of the day for the second reading of this bill, Lord Redesdale presented a petition from a private gentleman, complaining that the bill contained an indirect assumption of the right of the Crown to the foreshore—a right on which considerable doubt had been thrown by the latest decision.

Earl Granville moved the second reading of the bill.

The Duke of Buccleuch complained that the bill transferred to the Board of Trade powers over the foreshore which it was very doubtful whether the Crown possessed. He also commented severely upon the conduct of the Crown in encroaching upon the foreshore rights of private proprietors in Scotland.

Lord Chelmsford said that he understood the only object of the bill was to transfer whatever rights over the foreshores the Crown possessed from the Board of Woods and Forests to the Board of Trade. It did, however, contain some expressions which might be construed as extending such rights, and it would be desirable to omit them.

The Lord Chancellor denied that the act was intended to give clandestinely to the Crown powers which it did not possess. It was simply a transfer of such rights as the Crown did possess from one department of the Government to another.

Earl Granville said that it was not intended to sanction any encroachment on the rights of the commoners.

After a few words from the Earl of Derby,

The bill was read a second time.

Earl Nelson moved that the bill should be referred to a select committee.

Earl Granville opposed the motion.

The Earl of Malmesbury supported the reference to a select committee.

After a short conversation, the motion was agreed to.

THE COMPANIES ACT (1862) AMENDMENT BILL.

On the order of the day for going into committee on this bill,

Lord Redesdale objected to the clauses giving companies the power to reduce the amount of their shares. The class of persons who held 100l. shares was very different from the class of persons who held 10l. shares; and the effect of the clauses to which he referred would be that shares would be transferred from persons of substantial means to those in a humbler rank in life.

Lord Overstone said the bill would give great facility to spread shares amongst an inferior class of the community than these by whom they were now held. Shares were now little better than symbols of gambling, and this measure would promote the very speculation which it was desirable to repress. In May, 1864, the total number of shares created under the Companies Act was 42 millions. During the previous sixteen months, 13,350,000 shares had been created, and has this process had been continued in an intensified degree for the subsequent twenty months, he left their Lordships to judge what the number was at present. Surely it was not expedient to increase that number, and to spread wider and wider the ruin which these companies were calculated to produce. As an illustration of the working of these concerns, he might refer to the case of Overend, Gurney, & Co., conducted originally as a private firm. It was almost breaking down in consequence of the losses sustained by imprudent management, when the happy idea occurred to the members of the firm of selling it to a limited liability com-

pany. 500,000*l.* was given last year for the goodwill of the business. After only carrying on business for one year, the company had failed. 15*l.* had been paid on the 50*l.* shares, and he was told that 20*l.* more must be called up in order to meet the liabilities of the concern. There were 2300 shareholders, many of whom were wholly unable to meet such a demand, and he felt convinced that the greatest suffering must be the result. Should they, then, increase the area of such ruin? Only that morning the Agra and Masterman's Bank had failed. Both these banks were of the highest respectability. But in an evil day they combined under the fatalegis of limited liability, and in less than two years they failed. Would the House wish that, instead of there being 60,000 shares in this institution, there had been three millions? The noble Lord then read a letter from a gentleman in the city, in which the writer stated that the establishment of limited liability companies had led to great frauds in the concoction of schemes, and the issue and dealing in shares. Another city correspondent expressed a strong opinion, that the reduction in the value of shares would materially increase the mischief caused by limited liability companies, by diffusing their shares more widely, and amongst a humbler class of society. The noble Lord concluded by commenting upon the demoralising tendencies of speculations in shares and in the getting up of companies, and expressed a hope, that the House would not give any stimulus to the revival of a system which had, he trusted, received a blow that would for some time be fatal to it.

Lord Stanley of Alderley said that the argument of the noble Lord was really directed, not against the bill, but against limited liability. Now, his own illustrations shewed how unfounded those arguments were; for the failure of Overend, Gurney, & Co. was due to losses incurred by the old firm; and another bank which had failed was one in which the shareholders were liable without limit. It should be recollected that the creditors of these companies were safe against loss, which had not been the case in other failures. Nor could he conceive how the safety of creditors could be compromised by allowing companies to reduce the denomination of their shares. Companies could at present make their shares of the value of 10*l.*; and he did not see why they should be prevented from dividing one 100*l.* share into ten of the smaller amount. He believed that the public at large had not suffered from limited liability companies. No doubt individuals had done so; but it was not the duty of Parliament to protect these persons against the consequences of their own imprudence.

After some observations from Lord Overstone, in explanation,

Earl Grey could not see any useful purpose which this bill was likely to answer. The speech of Lord Stanley of Alderley appeared, indeed, to him to furnish a good reason why they should not pass it. For there was no reason for their interfering to give persons who had fixed their shares at one value the means of getting rid of them by reducing their amount. It was the duty of Parliament not to encourage speculation; and believing that that would be the effect of this measure, he should move that it be committed that day three months.

Lord Teynham supported the bill, which he did not think would have any injurious effect.

The House then divided on the question, that the House should go into committee, when there were—

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The bill was therefore thrown out.

Tuesday, June 12.

CONSOLIDATION OF THE STATUTES.

The Lord Chancellor laid on the table a bill for the further revision and consolidation of the statute law. When Lord Campbell was Lord Chancellor, an act was passed consolidating and revising statutes from 1770 to the present time. Under Lord Westbury another act of the same kind was passed, embracing the period from Magna Charta to the revolution of 1688. The bill which he was now introducing would cover the interval between the revolution and 1770. He moved that the bill should be read a first time.

Lord Brougham called attention to the necessity of an amendment of the patent laws.

Earl Granville was not prepared to pledge the Government to the introduction of any measure on the subject during the present session.

The bill was then read a first time.

The Prosecutions Expenses Bill passed through committee.

The Charitable Trusts' Deeds Inrolment Bill and the Lunacy Act (Scotland) Amendment Bill passed through committee.

JURIDICAL SOCIETY.—A meeting was held on Wednesday, the 13th inst., Mr. Droop in the chair. A letter was read from Lord Westbury, accepting the office of President, and intimating an intention, shortly, to take part in the meetings of the Society. Mr. C. H. Hopwood addressed the Society "upon the Bill brought in by the Attorney-General for the Abolition of Forfeiture in Felony and Treason." The Chairman, Mr. Massey, Mr. Stebbing, and Mr. V. Thompson, took part in the discussion which followed.

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THE JURIST.

LONDON, JUNE 23, 1866.

SOME recently decided cases afford illustration of the difficulty under which railway companies labour in carrying on their business. They are peculiarly situate with regard to their passengers. When a great many persons present themselves at a railway station, to be carried on a journey, it is frequently almost impossible to prevent passengers who have not provided themselves with proper tickets from entering the train. The law seems to press on these companies somewhat unduly. It may be urged, that as they are invested with powers which seem to incroach upon the general rights of property, it is but fair that they should be kept strictly to the performance of their duty towards the public. But this argument will appear fallacious when it is recollected how great an advantage accrues to society from the facilities for the transit, both of passengers and of goods, which railway companies afford. Indeed, to judge by the present price of shares in most of them, the public derive from them far greater benefit than the shareholders.

In the case of *Jennings v. The Great Western Railway Company* (12 Jur., N. S., part 1, p. 331), the plaintiff had taken and paid for tickets for some boys in his employ, who were to travel in charge of his horses. The train being divided into two, the plaintiff was sent off in the first portion. When the tickets were demanded of the boys, who were to travel in the second portion, they were unable to produce them, because the plaintiff had taken them with him. The servants of the defendants thereupon refused to allow the boys to proceed. The Court of Queen's Bench were so clearly of opinion that the law was against the defendants, that, on motion on their behalf, they even refused a rule nisi to set aside the verdict for the plaintiff. The case may be good law; but it seems to have been a hard one for the defendants. Possibly it might have been successfully alleged on the record by the defendants, that the tickets were issued to the plaintiff subject to an implied condition, that the defendants were to carry the boys only if they produced them when required, and that the plaintiff was bound to take care that his servants should be able to shew them. This decision seems to throw open the door to dishonesty. Railway companies will be placed in a difficult position if they attempt to guard against fraud in managing their excursion traffic. At the last moment several persons present themselves, who, on being requested to shew their tickets, may excuse themselves on the ground that they have been issued to some other passenger, who at the time cannot be found; time may not admit of a search for him; the company must choose one of two risks; either the persons must be allowed to proceed without its being ascertained that their fare has been paid, or the company must, by refusing to allow them to travel, incur the risk of

an action. In the case of *Dearden, App., Townsend, Resp.* (12 Jur., N. S., part 1, p. 120), the Court intimated, that as by the 8 & 9 Vict. c. 20, s. 103, a person travelling without a ticket is liable to a penalty only if he intend to evade payment of his fare, it is beyond the power of a company to make a by-law, declaring it penal to travel without a ticket, though no fraudulent intention be shewn. Railway companies often find it difficult to shew the fraudulent intention. It is true, that though the Court seemed to assume, that in order to bring a case within the statute, there must be a fraudulent intent, yet, whenever the point is raised before one of the superior courts, it may be successfully urged, that to sustain a conviction it is requisite to prove only an intent to evade payment, even in the bona fide belief on the part of the passenger, that he was justified in not paying the fare demanded by the company. This may, at first sight, seem to bear hardly on the public; but a little reflection will shew how difficult it is for a company to protect itself against fraud. The best remedy that can be devised would seem to be, to make it penal to travel without having paid the fare, but to exempt from the penalty any person who could shew that he had no intention to defraud. This may seem contrary to the spirit of the English law (see the judgment of Pollock, C. B., in *Reg. v. Curvoergen*, 11 Jur., N. S., part 1, p. 984); but the Legislature has in some instances made the proof of the absence of guilty intent lie on the accused. Thus, by the act relating to coinage offences, 24 & 25 Vict. c. 97, s. 7, to import counterfeit coin without lawful authority or excuse is made felony; but the proof of having lawful authority or excuse lies on the accused. (See also sects. 6, 8, 14, 19, 23, 24, and 25). By the Metropolitan Fire Brigade Act, 1865 (28 & 29 Vict. c. 90), s. 23, if the chimney of any house in the metropolis catch fire, the occupier is under all circumstances made liable to a penalty; although, if he be innocent of any default, he may recover the whole or any part of the penalty from the person by whose neglect the fire was occasioned. These cases seem to go much further than the above-mentioned alteration of the law as to enforcing penalties for travelling without a ticket.

In the case of *Le Conteur v. The London and South-western Railway Company* (12 Jur., N. S., part 1, p. 266) it was decided, that where a carrier contracts to carry goods partly by land and partly by water, he is protected by the Carriers Act, 11 Geo. 4 & 1 Will. 4, c. 68, as to so much of the transit as is to be performed by land, and the defendants were held not to be liable for the loss of a chronometer at Southampton belonging to one of the passengers. But if the loss had occurred at sea, the company, it seems, would have been liable. By the Merchant Shipping Act, 1854, sect. 504, an owner of a vessel is made liable for any loss to any goods on board any vessel, to the value of the ship and freight.

The law appears to need amendment: for it is very difficult to say, that if carriers by land ought to be protected, carriers by water stand on a different footing.

Court Papers.

EQUITY CAUSE LISTS, AFTER TRINITY TERM, 1866.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

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White v. Young (F C)
Official Liquidator of the London, Hamburg, and Continental Exchange Bank (Limited) v. Cork and Young's Railway Co. (M D)
Lloyd v. Banks (M D)
Berrie v. Howitt (M D)
Crossley v. Perkes (M D)
Davidson v. Davidson (M D)
Jones v. Badley (Cause, Witnesses)
Hadgraft v. Read (M D)
Cardiff Preserved Coal and Coke Co. (Limited) v. Newton (Cause)
Atherton v. British National Assurance Association (M D)
Kidd v. Tomlinson (M D)
Tomlinson v. Gregg (M D)
Cameron v. Marquis of Cholmondeley (F C)
Habershon v. Great Eastern Railway Co. (M D)
Loweth v. Norburn (M D)
Strickland v. Chomley, Bart. (M D)
Montefiore v. Behrens (F C)
Semple v. Parkyn (M D)
Hoskins v. Neal (M D)

Felthouse v. Bailey (Cause)
Mell v. Whitmore (F C)
Murray v. Gregson (M D)
Champain v. Coghlan (F C)
Hall v. Hall (F C)
In re Monkhouse's } (F C,
Estate } from
Sowerby v. Brunskill } Cha.
North-eastern Railway Co. v.
Lintz Colliery Co. (Cause)
Pritchard v. Roberts (F C)
Bolton v. Liddell } (F C)
Calton v. Liddell } (F C)
Merchant v. Blewitt (Cause)
Shaw v. Beazley (Cause)
Shepherd v. Allen (F C)
Ray v. Bendel (M D)
Milner v. Milner (F C)
Att.-Gen. v. Liddell (M D)
Vine v. Raleigh (F C)
Jordan v. Graham (F C)
Lefevre v. Huskisson (M D)
Butterworth v. Kassell (F C)
Hume v. Lawes (M D)

Brown v. Gellatly (F C)
Barber v. Turner (M D)
Wright v. Greenwood (M D)
Wright v. George (M D)
Watney v. Wells (F C)
Kerridge v. Read (M D)
Henry v. Hewitt (F C)
In re James } (F C, from
James v. James } Chambers)
Banks v. Barnes (M D)
Brett v. Dixon (M D)
Rich v. Whitfield (F C)
Troup v. Ricardo (Cause)
Butler v. Carter (M D)
Frew v. Strange (M D)
Bailey v. Woodall (M D)
Simons v. Bagnall (M D)
Attwood v. Alford (F C)
Halliwell v. Halliwell (F C)
Wall v. London, Chatham, &
Dover Railway Co. (M D)
Elliot v. Hook (M D)
Miller v. Mackay (F C)
Harrison v. Schnibben (F C).

Before the Vice-Chancellor Sir JOHN STUART.

CAUSES, &c.

Wedderburne v. Kearns (D)
Hutchinson v. Hastie (Cause)
Almond v. Surman (M D)
Foster v. Brown (M D)
Foster v. Oxenham (M D)
Pearson v. Rio de Janeiro City
Improvement Co. (Limited)
(Cause)
Gedye v. Symons (Cause,
Witnesses)
Hurrell v. Tucker (M D)
Lloyd v. Jones (M D)
Richardson v. Bruff (M D)
Baxendale v. M'Murray (M D)
Trickett v. Husler (M D)
Phillipps v. British Land Co.
(Limited) (M D)
Burgess v. Swaby (M D)
Morey v. Vandenbergh (M D)
Pearson v. Warwick (M D)
Brown v. Foster (Cause)
Lambe v. Beaver (F C)
Simpson v. Anderson (Cause)
Slater v. Brooksbank (Cause)
Reddrop v. Alston (F C)
Pole, Bart., v. Knox (M D)
Whiting v. Whiting (M D)
Hahn v. Hahn (M D)
Att.-Gen. v. Mid Kent Rail-
way Co. (Cause)
Evison v. Boutcher (M D)
Hill v. Pullen (M D)
Sandon v. Morgan (M D)
Wilkins v. Maughan (M D)
Macdonald v. Macdonald (M
D)
Crane v. Crane (M D)
Stevenson v. Skelton (M D)
Gillam v. Yeats (M D)
Ramsay v. Sheldermine (F C,
and 2 Ptns)
Halstead v. Halstead (F C)
Billingham v. Billingham
(Cause)
Lewis v. Allen (Cause)
Wright v. Marshall } (M
Bettridge v. Marshall } D)
Bashforth v. Bottomley (M D)
Hope v. Beresford Hope (F C)
Lloyd v. Vale (M D)
Bailey v. Bailey (M D)
Beech v. Hayes (M D)
Gregory v. Bristol and North
Somerset Railway Co. (M
D)
Att.-Gen. v. Wilkinson (M D)
Simmons v. British Nation
Life Assurance Association
(Cause)
Cook v. Bell (M D)
Brown v. Tanner (M D)
AHeck, Bart., v. Fortescue
(M D)
Warren v. Wybault (Cause)
May v. Armstrong (M D)
Davenport v. Moss (M D)
Crowther v. Bradney (M D)
Imperial Gas-light and Coke
Co. v. West London Junc-
tion Gas-light Co. (M D)
Osborn v. Duke of Marlbo-
rough (M D)
Williamson v. City Bank
(Cause)
Jenkins v. Williams (M D)
Hoare v. Marquis of Ayles-
bury (M D)
Hudson v. Bennett (M D)

Crump v. Moretonhampstead
and South Devon Railway
Co. (Cause) July 2
Simpson v. Beales (M D)
Childers v. Bardsley (M D)
Steward v. Jones (Cause)
Mustoe v. Great Eastern Rail-
way Co. (M D)
Simpson v. Tarrach (Cause)
Morgan v. Price (M D)
Dewar v. Maitland (M D)
Moore, M'Queen, & Co. (Li-
mited) v. Dicks (Cause)
Lucas v. West London Wharves
& Warehouses Co. (M D)
Henderson v. West London
Wharves & Warehouses Co.
(M D)
Warwick v. Newton (M D)
Wells v. Motley (Cause, Wit-
nesses)
Cook v. Spencer (M D)
Platt v. Walter (Cause)
Lee v. Angus (Cause)
Harbin v. Masterman (M D)
Dudney v. Hall (M D)
Osborn v. Pilbeam (Cause)
Robson v. Tiplady (M D)
Maule v. Beales (M D)
Betts v. Rimmel (M D)
Briggs v. Gregg (Cause)
Denny v. Denny (M D)
Lord Carington v. Wycombe
Railway Co. (M D)
Ilderton v. Marshall (Cause)
Metropolitan Board of Works
v. Pneumatic Despatch Co.
(Limited) (M D)
Keighley v. Barnes (M D)
Hallett v. Farley (M D)
Hunt v. Williams (Cause)
South-eastern Railway Co. v.
London, Brighton, & South
Coast Railway Co. (Cause)
Smith v. Barnes (M D)
Wilson v. Grey (Cause)
Ashwell v. Great Eastern
Railway Co. (M D)
Devereux v. Devereux (M D)
Whittaker v. Fox (M D)
Browne v. Hunter (Cause)
Viscountess Gort v. Clark
(Cause)
White v. Parker (Cause)
Tomlett v. Chard (M D)
Hunt v. Sidney (M D)
Att.-Gen. v. Bishop of Man-
chester (Cause)
Wyatt v. Steel (Cause)
Feaver v. Williams (Cause)
Boyd v. Pawle (F C, Sums.)
Dodd v. Holbrook (E to Mas-
ter's Report)
Pains v. Hutchinson (M D)
In re Hunt } (F C,
Hunt v. Sampson } Sums.)
Caton v. Coles (M D)
Beckwith v. Booth (M D)
Hope v. Carnegie (M D)
Singleton v. Pitman (M D)
Newcombe v. Jarman (M D)
Wade v. Watts (Cause)
Blomfield v. London, Chat-
ham, and Dover Railway
Co. (M D)
Brocklesby v. Lyford (M D)
Aders v. Hogg (M D)
Paterson v. Hart (M D)

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

CAUSES, &c.

Earl of Eglinton v. Lamb,
Bart. (M D)
Earl of Eglinton v. Lamb,
Bart. (M D)
Ransome v. Burgess (M D)
Att.-Gen. v. Poynder (M D,
part heard)
Johnson v. Hodgson (Cause,
Witnesses)
Poynder v. Hulbert (M D,
part heard)
Wakefield v. Duke of Buc-
cleugh (M D, Witnesses)
June 27
Cooke v. Ricketts (M D)
Warder v. Gunning (M D)
Dickson v. Watson (M D)
North Stafford Steel, Iron, &
Coal Co. (Burslem) (Li-
mited) v. Lord Camoys (M
D, Witnesses, part heard)
Serry v. Truss (M D)
Midland Railway Co. v. Lon-
don & North-western Rail-
way Co. (M D)
Hollis v. Allan (Sp C)
Mansel v. Thomas (M D)
Bridgwater v. De Winton
(Cause, Witnesses) June 25
Morrill v. Withey (M D)
Brandon v. Brandon and 11
other causes (F C)
Taylor v. Pearsall (M D)
Sullivan v. Ward (M D)
Lloyd v. Ashford (M D)
Ashman v. Sperring (M D)
Lee v. Blizard (F C)
Binney v. Chattaway (M D)
Rothery v. Nelson (Cause)
Henderson v. Dodds (F C)
Rose v. Rose (F C)
Trickett v. Russell (M D)
Upton v. Mavor (M D)
Colyer v. Colyer (F C)
Mackenna v. Parkes (Cause)
Kell v. Nokes (F C)
Johnston v. Brunskill (Cause)
Walters v. Walters (M D)

Kirby v. Brent (M D)
Fox v. Dellestable (M D)
White v. White (F C)
Thomas v. Cresswell (M D)
Ormandy v. Okell (M D)
Pigou v. Estate Co. (Limited)
(M D)
North v. Att.-Gen. (F C)
Hull v. Christian (F C)
Williams v. Williams (F C,
Summons)
Loveridge v. Bates (M D)
Yeatman v. Read (M D)
Hilton v. Hilton (M D)
Dolwin v. Ellis (M D)
Villars v. Tink (M D)
Bush v. Peterson (F C)
Crawford v. Higgs (M D)
White v. Birch (M D)
Hancock v. Bateman (M D)
Unwin v. Eykyn (F C)
Baring v. Harris (Cause)
Travis v. Taylor (F C)
Embleton v. Fogg (F C)
Green v. Measures (F C)
Watson v. Metropolitan Dis-
trict Railway Co. (M D)
Newton v. Robinson (M D)
Corrook v. Grant (M D)
Fox v. Jones (M D)
Smith v. Parkin (F C)
Anson v. Towgood (F D, C, &
Ptn)
Collyer v. Collyer (Sp C)
Pearce v. Smalpage (M D)
Williams v. Vaughan (M D)
Curling v. Walters (M D)
Tomkinson v. Naden (F C)
Slattery v. Axton (Case on Ap.
from Brompton County Ct.)
Hensman v. Fryer (F C)
In re Stephen } (FC from
Stephen v. Stephen } Chamb.)
Fitzgibbon v. Dillon (F C)
Governor, &c. of the Poor of
Bristol v. Pearce (Sp C)
Harrison v. Lewis (Cause).

Absolon v. Gibson (M D)
 Young v. Wareham Oil and
 Candle Co. (Limited) (Ca.)
 Staniforth v. White (Cause)
 Bailey v. Bailey (M D)
 Arden v. Parry (M D)
 Atwood v. Maude (M D)
 Parsons v. Webb (M D)
 Heriot v. London, Chatham,
 and Dover Railway Co. (M
 D)
 Wimsset v. Simpson (M D,
 Witnesses)
 Jones v. Wilbraham (M D)
 In re Coleby } (F C, from
 Coleby v. Coleby } Chamb.)
 Law v. Glenn (M D)
 Lockwood v. Ellam (M D, M)
 Reed v. Wilkins (Cause)
 Hodgson v. Hodgson (M D)

Bauer v. Bauer (F C)
 Dean v. Greenwood (F C)
 Pole v. Pole (M D)
 Hiron v. Bartlett (M D)
 Hallett v. Garrett (M D)
 Maielli v. Fellowes (M D) 1st
 C D
 Phillips v. Pullen (M D)
 Gibbs v. Robent (M D)
 Beck v. Davis (M D)
 Barlow v. Perkins (M D)
 Rudd v. Aislible (Cause)
 Nicholson v. Wardropper (M
 D)
 Roughton v. London Offices
 Co. (M D)
 Pidgeon v. Spencer (M D)
 Craven v. Traill (M D)
 Edwards v. Parry (M D)
 Harvey v. Palmer (M D).

Jenkins v. Jenkins (F C)
 Jocelyne v. Bruty (F C)
 Francis v. Morris (F C)
 Borman v. Willmet (Cause)
 Drew v. Martin (F C)
 Pearson v. Dolman (Cause)
 Pearson v. Dolman (Cause)
 Senior v. Pawson (M D)
 Morgan v. M'Adam (Cause)
 Hamilton v. Buckmaster (M
 D)
 Campbell v. Melvill (F C)
 Sparling v. Breton (M D)
 Lamb v. Samuelson (Cause)
 Orriss v. West London
 Wharves and Warehouses
 Co. (M D)
 Robinson v. Lyttleton (M D)
 Tweed v. Wagstaff (Cause)
 Earl de la Warr v. West (M
 D)
 Orred v. Chamberlaine (Cau.)
 Pickett v. Longley (M D)
 Hicks v. Slade (M D)
 Cox v. Gifford (Cause)
 De Winton v. Evans (M D)
 Brackenbury v. Gibbons (Ca.)
 De la Peyrouse v. Peaby (M
 D)
 Lord v. Lord (M D)
 Hooper v. Elliot (Cause)
 Stevens v. Crouch (Cause)
 Pembroke v. Friend (F C)
 Prendergast v. Earl Cadogan
 (M D)
 Armstrong v. Wainwright (M
 D)
 Whall v. Duke of Newcastle
 (M D)
 Bengough v. Baker (M D)
 Cook v. Tibbs (F C, Suma.)
 Hughes v. Hughes (M D)
 Hurry v. Morgan (Sp C)
 Wolverhampton & Stafford-
 shire Banking Co. v. Hop-
 kins (M D)
 Buck v. Robson (M D)
 Wragg v. Morley (F C)
 Blake v. Blake (Cause)
 Att.-Gen. v. West Riding, &c.
 Grimsby Railway Co. (M
 D)
 Wilson, Bart., v. Metropolitan
 and St. John's Wood Rail-
 way Co. (M D)
 Colquhoun v. Ouvry (M D)
 Clarke v. Bathe (M D)
 Edmondson v. Jeffries (M D)

Lord Norbury v. Kitchen
 (Further hearing after issue
 at law)
 Ross v. Estates Investment
 Co. (Limited) (M D)
 Newall v. Telegraph Con-
 struction and Maintenance
 Co. (Limited) (Cause, Wit-
 nesses)
 Maxwell v. Wightwick (M D)
 Kingston v. Palmer (M D)
 Stribling v. Lewis (Cause)
 Jackson v. Ivimey (Cause)
 Elgar v. Wilson (M D)
 Beaumont v. London, Chat-
 ham, and Dover Railway
 Co. (M D)
 Maxwell v. Mieville (M D)
 Lumb v. Heald (M D)
 Irvine v. Sullivan (M D)
 Western v. Western (Cause)
 Kennedy v. Landon (M D)
 Att.-Gen. v. Mayor, Alder-
 men, and Citizens of the
 City of Norwich (M D)
 Shera v. Tointon (M D)
 Williams v. Bagnall (Cause)
 Firth v. Fowler (M D)
 Firth v. Fowler (M D)
 Stepany v. Chambers (Cause)
 Newall v. Telegraph Con-
 struction and Maintenance
 Co. (Limited) (Trial with-
 out a jury)
 Wright v. Symonds (M D)
 Dickeson v. Wood (M D)
 Alger v. Parrott (Sp C)
 Skev v. Skev (F C)
 Clockheaton Industrial Self-
 help Society (Limited) v.
 Jackson (M D)
 Beck v. Matthews (M D)
 Trimmer v. Chalcraft (M D)
 Hawkins v. Hine (M D)
 Williams v. Gratrex (Cause)
 Pilcher v. Marsh (M D)
 Tate v. Turner (Cause)
 Fenton v. Fenton (F C)
 Gonne v. Cook (Sp C)
 Eastwood v. Lockwood (M D)
 Smedley v. Smedley (Cause)
 Burchell v. Burchell (M D)
 Porcher v. Wilson (F C)
 Jackson v. Cartwright (M D)
 Wood v. Harland (F C)
 Thomas v. Appleby (Cause)
 Collings v. Nelson (Cause)
 Bank of India v. Bell (Cause).

Before the Vice-Chancellor Sir W. P. Wood.

CAUSES, &c.

Forbes v. Mackenzie } (Cau.,
 Mackenzie v. Forbes } Part
 Forbes v. Steven } heard)
 Forbes v. Bowman }
 Martin, Bart., v. Martin (Sp C)
 Crundell v. Cox (F C)
 Dawson v. Medhurst (M D)
 Solomon v. Dadson (Cause)
 Lawrence v. Lawrence (E to
 answer)
 Booth v. Fielding (D)
 Dixon v. Fraser (E to ans.)
 Simpson v. Charlesworth (E
 to answer)
 Bovill v. Smith (E to answer)
 Rashdall v. Ford (D)
 Foster v. Gladstone (M D)
 Wedderburne v. Thomas
 (Cause, P C)
 Greenhalgh v. Rumney (Cau.)
 Hinde v. Morton (Cause)
 Fuller v. Chamier (Rehear.)
 Wedderburne v. Thomas
 (Cause)
 Wickham v. Scarfe (Cause)
 Goodwin v. Lee (F C)
 Wilson v. Wilson (M D)
 Neville v. Andrews (F C)
 Heiron v. Alexander (Cause)
 Otway Cave v. Otway (Cause)
 Prankerd v. Whitehead (M D)
 Snowball v. Wrightson (M D)
 Allin v. Archer (M D)
 Langford v. Samson (F C)
 Hynam v. Dunn (M D)
 In re Osborne's Es- } (F C,
 tate } from
 Osborne v. Osborne } Cham.)
 Swain v. Salmon (F C)
 Hill v. Hill (F C)
 Paris v. Cooke (Cause)
 Woodhouse v. Manchester,
 Sheffield, and Lincolnshire
 Railway Co. (M D)
 Jewan v. Whitworth (M D)
 Smith v. Greenhill (F C)
 Sykes v. Dyson (F C)
 Stanford v. Dumergue (Cause)
 Davenport v. Townsend (Cau.,
 Witnesses)
 Stanier v. Evans (M D)
 Jarman v. Vye (F C)
 Rymer v. Preston (M D)
 Samner v. Healey (M D)
 Bovill v. Crate (M D)
 Place v. Heywood (M D)

Leather v. Smith (M D)
 Horwood v. Bagnall (M D)
 Jackson v. Shanks (Cause)
 Turner v. Mullineux (F C)
 Saunders v. Mackeson (Cau.,
 Witnesses)
 Rayment v. Boorn (M D)
 Mostyn v. Emanuel (F C)
 Betts v. Neilson (M D)
 Swansea Vale Railway Co. v.
 Budd (M D)
 Hallows v. Fernie (M D)
 Nicholl v. Jones (Cause, Wit-
 nesses)
 Jackson v. Bognor Railway
 Co. (M D)
 Walker v. Drummond (F C)
 Thorn v. Croft (Sp C)
 Francis v. Watson (F C, Sum-
 mons)
 Roger v. Allison (M D)
 Greenhalgh v. Rumney (Cau.,
 Witnesses)
 Whitter v. Bremridge (F C)
 Morgan v. Fuller (Trial with-
 out a jury)
 Davies v. Davies (F C)
 Dennison v. Curtis (Cause)
 Morgan v. Fuller (Cause, evi-
 dence vivâ voce)
 Atwood v. Merryweather (Ca.,
 Witnesses)
 Pietroni v. Transatlantic Co.
 (Cause)
 Bell v. Nevin (Sp C)
 Slee v. International Bank
 (Limited) (M D)
 Baines v. Ibbetson (Sp C)
 Owen v. Davies (F C)
 Jackson v. Bognor Railway
 Co. (M D)
 Chamberlaine v. Orred (Cau.)
 Row v. Row (F C)
 Brooks v. Ponting (M D)
 Rhys v. Williams (M D)
 Gilbert v. Charing-cross Rail-
 way Co. (F C)
 Fleming v. Fleming (Sp C)
 Att.-Gen. v. Staffordshire Cop-
 per Extracting Co. (Limited)
 (M D, part heard) June 25
 Harrison v. Symons (F C)
 Baskett v. Skeel (F C)
 Feilden v. Mayor, &c. of Black-
 burn (M D)
 Williams v. Rhys (M D)

OFFICE OF LAND REGISTRY.—GENERAL
 ORDERS, DIRECTIONS, AND FORMS.

(Continued from p. 251).

154. If no new tracing is required, and the dealing is by way of transfer absolutely, Colonel Leach will at the like cost at once,—or, if a new tracing is required when the same has been returned, approved by the parties,—distinguish on the original map the part dealt with, and will also at the like cost make a new map of the part dealt with for deposit by the transferee in this office, distinguished by a new number, being the same number as that of the intended new separate record.

155. If the dealing is not by way of absolute transfer, no new map will generally be required, and Colonel Leach will (at the like expense) distinguish the

part dealt with on a plan or tracing to be annexed to the original map, or will otherwise distinguish it; and for this purpose, where the identity of the land dealt with does not clearly appear, an approved tracing from the original map must be furnished.

156. "The person so applying [i. e. for registration] shall leave in the office the statement, signed by himself or his solicitor, of the particular estate or interest, or right or title, which he requires to be entered on the register; and any objection made by the applicant to the settlement thereof by the registrar shall be proceeded on in all respects in like manner as is provided by the 13th Order [See No. 48] [i. e. of 1862] with reference to the original registration." (28).

157. This statement will generally be prepared in the office as soon as the document to be registered has been received for registration, and the necessary map or tracing (if any) received from Colonel Leach.

158. The examined printed copy will then be filed and referenced. Before the original document is returned, a receipt must be given for the same [See No. 279]; and the 75th section of the act requires that the original document shall be "stamped or indorsed so as to give notice of the registration thereof."

159. When the statement is prepared, a copy will generally (unless the registrar shall otherwise direct) be forwarded through the post or otherwise to the principal parties interested, or their respective solicitors, who must proceed thereon in the manner therein pointed out.

160. The 13th Order of 1862 provides, that objections to the statement shall be made in writing, and left in the office within such time as shall be appointed for the purpose, and that on such objection being left, an appointment shall be obtained for attendance on the registrar for his consideration thereof.

161. The following are the forms of statements for registration used in the office, the examples given being respectively transfers in fee of the whole, and of part of the registered property. Form A 1 being used for applicants when no separate record is required; as, for example, on conveyance of the whole property. Form A 2 being used in the like cases for parties interested, other than applicants. Form B 1 being used for applicants where a separate record is required; as, for example, on conveyance of a part only of registered property. And Form B 2 being used in like cases for parties interested, other than applicants.

Form A 1. No. 400.

Office of Land Registry,
34, Lincoln's-inn-fields, London, W. C.

STATEMENT FOR REGISTRATION.

The particulars of the entry to be made on the register by reason of the document left for registration on the 20th February, 1866, are stated below.

If you have no objection to make to the registration, this paper should be signed by you or your solicitor, and returned to this office on or before the 3rd March next; after which day, if this paper has been returned signed as above directed, the registration may be completed. And take notice, that if you have any objection to make to the registration, your objection and the particulars thereof must be stated in writing, signed by you or your solicitor, and returned with this paper to this office; and a warrant to hear the same before the registrar must be taken out at this office, and served by you before the registration can be completed. Dated this 24th day of February, 1866.

O. D. Mordaunt,
Chief Clerk.

To A. B., of &c.

No. 400. Particulars of Entry on Register.

In the Record of Title.

Date of Entry.	Estates, Powers, Interests, &c.	Instrument Book.	Observations.
Feb. 20, 1866.	A. B., of &c., is entitled in fee-simple in possession A. B. was not married before the year 1834, and has by deed dated since that year declared that his widow shall not be entitled to dower.	Vol. 4, p. 70.	Certificate of marriage of A. B. in the year 1840. Inst. Book, vol. 4, p. 71.

Form A 2.—No. 400.

Office of Land Registry,
34, Lincoln's-inn-fields, London, W. C.

STATEMENT FOR REGISTRATION.

The particulars of the entry to be made on the register by reason of the document left for registration on the 20th day of February, 1866, are stated below:—

If you have no objection to make the registration, this paper should be signed by you or your solicitor, and returned to this office on or before the 3rd day of March next, after which day the registration may be completed. And take notice, that if you have any objection to make to the registration, your objection, and the particulars thereof, must be stated in writing, signed by you or your solicitor, and returned with this paper to this office, and a warrant to hear the same before the registrar must be taken out at this office and served by you on or before the said 3rd day of March next, otherwise your objection will not be attended to.

Dated this 24th day of February, 1866.

O. D. Mordaunt,
To C. D., of &c. Chief Clerk.

Particulars of Entry on Register.

[The same as in Form A 1.]

Form B 1.—Original No. 450; new No. 2000.

Office of Land Registry,
34, Lincoln's-inn-fields, London, W. C.

STATEMENT FOR REGISTRATION.

The particulars of the entry to be made on the register by reason of the document left for registration on the 20th of February, 1866, are stated below.

A separate record of the part dealt with will be made the new number (2000).

If you have no objection [&c., as in Form A 1.]

Dated this 24th day of February, 1866.

O. D. Mordaunt,
To E. F., of &c. Chief Clerk.

Particulars of Entry on Register.

In the Register of Estates.—Original No. 450.

Date of Entry.	Description.
Feb. 20, 1866.	Such part of the hereditaments as is numbered 2000 in green and edged with green on the deposited map is disposed of.

The following are the particulars of the separate record to be made under the new number (2000):—

No. 2000.

In the Register of Estates.

<i>Date of Entry.</i>	<i>Description.</i>
Feb. 20, 1866.	The hereditaments, part of Whiteacres, in the parish of Godstone, in the county of Surrey, delineated on the map No. 2000, deposited in the office of Land Registry as part of the description of the same hereditaments, and thereon edged with red, together with the mines and minerals under the same.

No. 2800.

In the Record of Title.

<i>Date of Entry.</i>	<i>Estates, Powers, Interests, &c.</i>	<i>Instrument Book.</i>	<i>Observations.</i>
Feb. 20, 1866.	R. F., of &c., is entitled in fee-simple in possession E. F. was not married before the year 1834, and has by deed dated since that year, declared that his widow shall not be entitled to dower.	Vol. 4, p. 80.	Certificate of marriage of R. F. in the year 1840, Inst. Book, Vol. 4, p. 81.

Form B 2 is similar to Form B 1, except that its third paragraph corresponds with the second paragraph of Form A 2.

162. "The evidence to be produced of the execution or signature of any document proposed to be registered, and of the identity of any person, and otherwise in support of any proposed registration, shall be such as shall, in the judgment of the registrar, be satisfactory; and when the registrar is satisfied therewith, and the several other matters required by the said act, and by the General Orders made thereunder, to be done prior to registration have been done, he shall forthwith complete the proposed registration." 17.

163. The 90th section of the act provides, that "where any part of the money arising from the sale of a registered estate is not immediately distributable, or the persons entitled thereto cannot be fully ascertained, it shall be competent for one of the judges of the Court of Chancery, on any application for that purpose, made with the concurrence of the registrar, to direct any sum of money arising from such sale to be paid into the Court of Chancery, or otherwise invested, and to declare the account or purpose to or for which such money is to be transferred or holden, and afterwards to make all such orders touching such money, and the investment, application, and distribution thereof, as the circumstances of the case may require."

164. The final entry in the register will be in accordance with the statements for registration as finally settled by the registrar; and when such entry has been made, the official note of reference which was made when the document was received for registration will be cancelled.

165. "The registration of any document or title under any number on the register shall not be deemed registration of such document or title in respect of any lands not entered on the register under such number." 26.

Settlements, Contracts, and [see No. 191] Leases.

166. The above rules, except where the contract shews the contrary, apply to settlements, contracts, and leases, and all other like dealings affecting registered land.

167. With regard to moneys raisable under trusts for sale or under charges, or otherwise payable to trustees under any settlement, it will not be necessary to register the names of the persons beneficially entitled, or any dealing with their interests; but the names and estates of the trustees, and the nature of the trusts, must be noticed on the register.

168. Where contracts are signed by an agent of a registered owner, the signature of the agent, and his authority from and the identity of the registered owner, must be proved by statutory declaration.

169. All contracts which are required to be registered must be printed.

Dealings with Moneys secured on Registered Estates.

170. The 77th section of the act provides, that "notice of every instrument transferring or in anywise dealing with or affecting the ownership of or the right to receive money due on any mortgage, charge, or incumbrance entered on the register shall be given to the registrar, who shall note the same in the registry of incumbrances."

171. "All notices under the 77th section of the act shall be signed by the party giving the same, or his solicitor, and contain a proper and sufficient description of and reference to the property on the register, and the name of the person entered on the register, and the date of the instrument and the names of the parties thereto, and the consideration for the same, and such other particulars as will enable the registrar to make the necessary entry thereof, and shall contain also an address at which all notices may be served in Great Britain." (29).

172. "Where notice is given in pursuance of the 77th section of the act, and the 29th of the General Orders of the 1st October, 1862, the instrument referred to in such notice must be produced, and the case proceeded with in all respects as is by these Orders provided, with respect to dispositions generally, unless the registrar shall, for any reason, think proper otherwise to direct." 10.

173. A fee of 1*l.* is payable for every notice under the 77th section of the act.

Wills.

174. "Where the registration of any will, or of any estate or interest thereunder, is required, the person applying to register the same shall leave in the office a copy of the will, or a memorial containing a copy of all the provisions in the will relating to or affecting the registered land, and the copy or memorial left in the office shall be examined and ascertained to be correct, at the expense of the applicant, in such manner as the registrar shall direct; and the applicant, if required, shall, at the time of leaving such copy or memorial, or when required by the registrar, deposit in the office a sum sufficient to meet the expense of so verifying the same. The amount of such deposit to be settled by the registrar." 6.

175. The person desiring to register a will or any estate thereunder, or his solicitor, must sign an application for the purpose, and leave the same in the office, together with a statutory declaration of the identity of the testator as a registered owner, which will usually be required to be made by a solicitor, and must also leave therewith, if the will has been proved in a Court of Probate, an office copy and probate act of such will; and if it has not been proved, a plain written or printed copy of the will, together with the original will for

examination therewith; or if it is desired that in lieu of a copy a memorial of the will should be registered, then, in addition to the office copy and probate act, or plain copy and original will, a memorial of the will must also be left in the office. Unless a printed copy of the will or memorial, as the case may be, is left in the office, a sum sufficient to meet the cost of printing the copy will or memorial must also be left with the application.

176. A similar statement as to value as is required in cases of transfers, where the value of the land does not appear from the document to be registered, must also be left with the application [See No. 132], and the advalorem fee payable under the Transfer of Land Act must be paid accordingly by stamps to be affixed to the application.

177. The copy will or memorial will then be considered as received for registration.

178. The due execution of the will must generally be proved by the declaration or oath of the attesting witnesses; or, if that is not practicable, by other satisfactory evidence. And a statutory declaration by the solicitor of the testator, or other person having had confidential relation with him and knowledge of his affairs, shewing that all proper searches and inquiries have been made, and that the will is in fact his last will, to the best of the deponent's belief, must be furnished. And such other evidence must be produced in each case as the circumstances thereof may render expedient.

179. Notice of the intended registration of any will must generally be given to the heir-at-law of the testator, and for this purpose evidence must be furnished, by statutory declaration or otherwise, of the name and address of such heir; and such notice must be prepared by the applicant, and must be under the seal of, and be served through, the office, at his expense.

180. Search for special land certificates, restraints, and cautions must also be made.

181. The completion of the registration of the will or memorial will in other respects be proceeded with, in like manner as before described with reference to dispositions generally; but where there is a memorial, regard must also be had to the directions hereafter given as to proceedings on memorials.

182. Before any will can be registered, a memorial of the death of the testator must be entered on the register.

183. The registration of any will will be effectual only in respect of the land under the registered number of which such registration is made.

184. The 78th section of the act empowers the Court of Chancery, in cases of doubtful or disputed successions, to appoint a person to be registered as representative of the estate.

Transfer of Mortgages after mesne unregistered Assignments.

185. "Where land is entered on the register as subject to any mortgage, or any like charge, upon the transfer or other dealing with such mortgage or charge, the person applying to enter the same in the register shall, in case there has been any dealing with, or transmission of, or interest created or arisen in the same, not appearing in the register, leave in the office a memorial or abstract thereof, and produce evidence to prove the title proposed to be entered on the register." 9.

186. The 9th Order of 1864 applies to those cases where an estate is registered subject to a mortgage, which mortgage has been dealt with, but the dealings have not been registered, and application is made to register the existing title to such mortgage. In such case the applicant must leave in the office a memorial

of his title, which must be printed for the purpose of registration. The applicant must also deduce his title to the satisfaction of the registrar, and for that purpose must furnish an abstract thereof as from the registered mortgage; and such abstract must be verified by statutory declaration, and the title otherwise verified and investigated in the usual way at the applicant's expense, in like manner as in the case of first registration of title, subject to such special directions as the registrar shall think it necessary to give. And before the completion of the registration, the applicant, and his solicitor or agent, must make an oath, similar to that required on first registration by the 22nd section of the act, that all documents and matters relating to the title have been disclosed to the registrar. The usual searches for special land certificates, restraints, and cautions, must be made, and the proceedings in other respects will be the same as those pointed out with respect to dispositions generally.

187. The following are forms of an application and memorial, viz.—

No. 60.

LAND REGISTRY.

O. B., of &c., having become entitled to or interested in the charge, dated the 30th June, 1854, registered in the name of E. F., on the hereditaments in the parish of &c., in the county of &c., numbered 60 on the register of estates with an indefeasible title, in the manner following; that is to say, by transfer, by deed dated, &c., from G. H., in whom the charge was vested, as appears from the abstract of title referred to in the memorial left herewith, hereby requests the registrar to register the said memorial and the title accordingly.

Dated, &c.

[Signature of C. B. or his solicitor.]

No. 60.

LAND REGISTRY.

Memorial.

O. B., of &c., having become entitled, &c. [as in application down to and including the words "abstract of title."], marked A., and signed by the said C. B. [or by X. Y., the solicitor of the said C. B.], and left in the office of Land Registry, requires the same to be registered accordingly. [The abstract must be made an exhibit, and signed by the applicant or his solicitor.]

The evidence in support of the title of the said C. B. is referred to or contained in the aforesaid abstract marked A.

Dated, &c.

[Signature of C. B. or his solicitor.]

Removal of Registered Instruments.

188. The 87th section of the act provides, that "the registrar, upon the application of the person entitled under any registered instrument, or upon its being proved that the purpose of such instrument is determined or satisfied, may remove the same from the register, and erase or cancel any official note thereof."

"Every application to be made under sect. 87 of the act shall be signed by the applicant, and supported by such evidence as the registrar shall require, and the instrument to which such application shall relate shall be left at the office at the same time as such application." (45).

189. Before any application can be received, under the 87th section of the act, to remove from the register any mortgage or charge upon its release or satisfaction, the document by which the release was effected must be entered on the register in the usual way; or, in the event of the charge being an equitable one only, a memorial of its discharge, referring to the evidence thereof, must, together with the application and evidence itself, be left in the office.

190. The forms of and proceeding on such memorial will be similar to those hereinafter pointed out on memorials generally.

191. If the application should be made on the determination of any lease otherwise than by effluxion of time, there must be a memorial, and the case be proceeded with as is hereinbefore pointed out with regard to transfer of mortgages after meane unregistered assignments. A similar course would be followed on an application to register any modification of the terms of any lease appearing on the register.

192. A fee of 7s. must be fixed on any application to remove an instrument from the register.

Land Certificates after Registration.

193. Upon the completion of every absolute transfer, the transferee is entitled to a land certificate, but if the transfer is of the whole registered property, any subsisting land certificate must be first delivered up.

194. Any registered incumbrancer is also entitled to a certificate containing a description of the lands, and the particulars of his incumbrance.

195. The 70th section of the act provides, that "whenever any registered proprietor shall be desirous of selling, mortgaging, or settling any registered land, or estate therein, he may obtain from the registrar a special land certificate for that purpose, which shall contain an exact description of the land proposed to be so dealt with, taken from the register of estates, and shall also state the nature of the estate and interest of such proprietor therein, and the particulars of the incumbrances, if any, affecting the land described. Such certificate shall be conclusive evidence of the title of the registered proprietor to the land, as appearing by the record of title. No entry shall be made by the registrar in the registry of any deed, instrument, act, or transaction affecting the land comprised in such special certificate, and the estate of the registered proprietor described therein, except on the delivery up of such certificate, until fourteen days have expired from and after the day of the date thereof. A note of such special land certificate shall be entered in the record of title and in the register of incumbrances, and also on the original land certificate."

196. "Any person entitled to have, and requiring, a land certificate or certificate of incumbrance, shall apply for the same in writing, stating the particular nature of the certificate required, and the number of the estate on the registry. Every application for a special land certificate shall be accompanied by the original land certificate, which shall be left at the office, in order that such note may be made thereon as is required by sect. 70 of the act." (23).

197. The following are forms of application for a land certificate (A.) and certificate of incumbrance (B.) respectively:—

No. 80 (A.) LAND REGISTRY.

A. B., of &c., hereby requests the registrar to deliver to him, a person named and described in the record of title as the owner of an estate or interest in the lands numbered 80 on the register, a land certificate [or a special land certificate, as the case may be.]

Dated, &c.

[Signature of A. B. or his solicitor.]

No. 80 (B.) LAND REGISTRY.

E. F., of &c., hereby requests the registrar to deliver to him, a person appearing by the register of incumbrances to be entitled to [here state nature of incumbrance] on the hereditaments numbered 80 on the register, a certificate of the incumbrance to which he is so entitled.

Dated, &c.

[Signature of E. F. or his solicitor.]

198. The fees on special land certificates are payable on a scale equal to one-half of the fees payable for an original land certificate.

199. The object of the special land certificate is to enable a person dealing with registered land, within fourteen days after the date thereof, to see, without reference to the register, the exact state of the title, and to render further investigation unnecessary.

200. The 71st section of the act provides that "every land certificate shall be evidence of the several matters therein contained;" but as a land certificate is only evidence of the entries on the register up to its date, it should, upon any subsequent dealing, be compared with the register, unless, in the case of a special land certificate, the dealing is completed and registered within the fourteen days during which it is effectual under the 70th section of the act.

201. "If any comparison of, alteration in, addition to, or omission from, a land certificate or certificate of incumbrance shall be at any time required, application for the same shall be made in writing, and such course shall be taken and acts done with respect thereto as the registrar shall direct." (24).

202. An original land certificate can at any time, at the request of the holder, be compared with the register, and certified as correct, such additions or alterations (if any) as may be necessary to make the same correspond with the register being made therein, or a new land certificate may be granted on the delivery up of the original certificate, or upon its loss or destruction being proved to the satisfaction of the registrar; but in the later case the 118th section of the act enacts that the registrar shall state upon the face thereof that it is granted in substitution for the former certificate, and provides that "no such new certificate shall be of any avail against any person who may have already derived title under the former certificate."

203. A fee of 5s. is payable for every certificate on comparison with the register, if there are no additions or alterations, and 10s. if any additions or alterations are necessary.

204. The fee on a new certificate is the same as on an original certificate.

205. The following is a form of application for an additional or amended certificate:—

No. 80. LAND REGISTRY.

A. B., of &c., being the holder of a land certificate of the hereditaments numbered 80 on the register, hereby requests the registrar to compare such certificate with the register.

Dated, &c.

[Signature of A. B. or his solicitor.]

Deposit of or Indorsement on Land Certificates.

206. The 73rd section of the act provides that "the deposit of the land certificate shall, for the purpose of creating a lien on the estate and interest of the depositor, have the same effect as a deposit of the title-deeds of the estate would have had before the passing of this act, and any agreement or memorandum in writing relating to such deposit shall be chargeable with the same stamp duty as an agreement accompanied with a deposit of the title-deeds would be chargeable with."

The 73rd section applies to an original not a special land certificate.

207. Any agreement or memorandum relating to a deposit of a land certificate must be registered in like manner as is hereinbefore pointed out with regard to dispositions generally.

208. In the event of a deposit of a land certificate by way of lien, unaccompanied by any memorandum

in writing, a memorial of such deposit, signed by the person interested therein, or his solicitor, should be prepared, and an application made for the registration thereof, and the registration of such memorial should be proceeded with, in the manner hereinafter pointed out for the registration of memorials of facts. The statements in the memorial must be verified by statutory declaration, and (unless the registrar shall otherwise direct) notice must be given through the post to the registered owner whose estate is sought to be affected, such notice being sent to his registered address.

209. The office fee of 2s. 6d. for the first 1000l., and of 6d. for each additional 500l. or fractional part thereof, will be payable on the amount secured by the deposit.

210. The deposit of a land certificate will not create a charge binding on a subsequent purchaser who has registered his purchase before a memorandum or memorial of such deposit has been entered on the register.

211. Conveyances or mortgages by indorsement on land certificates are subject to the like rules as to registration as other conveyances or mortgages, and are not effectual against a subsequent purchaser who has registered his purchase previously to their registration.

212. In all cases of indorsements, the printed copy of the indorsed document should state at the head thereof the date of the document on which the indorsement is made, and the parties thereto, or, in the case of a land certificate, to whom granted.

(To be continued).

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

TRINITY TERM, 1866.

FINAL EXAMINATION.

At the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

1. John Richard Collins, who served his clerkship to Mr. Thomas William Grey, of Exeter; and Messrs. Cooke, Kingdon, & Cotton, of London.

2. Frederick Nalder, who served his clerkship to Frank Isaac Nalder, of Shepton Mallet.

2. Francis Henry Phillips, who served his clerkship to Mr. Jacob Phillips, of Chippenham; Mr. William Simpson, of New Malton; and Messrs. Williamson, Hill, & Co., of London.

3. Frederick King Frost, who served his clerkship to Mr. John Metcalfe Pollard, of Ipswich; and Messrs. Shirreff & Son, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—

To Mr. Collins, the prize of the Honourable Society of Clifford's-inn.

To Mr. Nalder, one of the prizes of the Incorporated Law Society.

To Mr. Phillips, one of the prizes of the Incorporated Law Society.

To Mr. Frost, one of the prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Edward Montague Browne, who served his clerkship to Mr. Newenham Charles Wright, of London; and Mr. John Becke, of Northampton.

Thomas Mountain, who served his clerkship to Messrs. Grange & Wintringham, of Great Grimaby; and Messrs. Carritt & Son, of London.

Albert Edward Scott, who served his clerkship to Messrs. Scott & Co., of Lincoln's-inn-fields, London.

Julius Henry Smith, who served his clerkship to Mr. Francis Sanders, of Dudley.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidate, that his answers to the questions at the examination were highly satisfactory, and would have entitled him to a certificate of merit if he had not been above the age of twenty-six:—

Charles Scott, B.A.

The number of candidates examined in this term was 134; of these 111 passed, and 23 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,
London, June 15, 1866.

Imperial Parliament.

HOUSE OF LORDS.—Friday, June 15.

LAW OF CAPITAL PUNISHMENT AMENDMENT BILL.

The House went into committee (on recommitment) upon this bill.

Clauses 1 to 12 were agreed to.

On clause 13, providing that executions should in future take place in private,

Lord *St. Leonards* moved the rejection of the clause. We had a mode of execution at present in force which had been handed down to us from past centuries, and which, therefore, did not shock the public; but any change would revolt the feelings of the public, and would probably lead to the abolition of capital punishment altogether. He believed that public executions produced a moral effect which private executions would not have, for the impression upon the spectators was most salutary, while the boldest and most hardened man shrunk from the degradation of being hanged like a dog in the face of his fellow creatures. Publicity at every stage in the constitution of criminal justice, from a man's first arrest to his final punishment, lay at the very root of our system, was one of the foundations of the constitution, and tended more than anything else to inspire general confidence. It was, in his opinion, perfectly unconstitutional to deprive a man of life secretly.

The Duke of *Richmond* quoted extracts from the evidence taken by the Royal Commission, in order to shew that the effect upon the mob who attended public executions was not salutary. They were not inspired with horror or dread at the sight; but, on the contrary, regarded it simply as an amusement. No good impression could be produced upon those who looked upon the matter in this light; and the riotous conduct of the populace present on these occasions shewed that they did not feel deeply. The system of private executions had been in operation for some years in New South Wales, and had worked satisfactorily there.

The Lord Chancellor did not think that the publicity of a man's trial supplied any analogy for the publicity of his execution. In point of fact, capital punishment was the only one inflicted publicly. He thought that the evil of collecting together large crowds of the lowest class of persons to witness executions was very great; nor did he think that any salutary effect would be lost by making them private. The Royal Commission had reported unanimously in favour of private executions, and he trusted that the House would assent to the clause.

Lord *Dumfries* said that the Government ought to take care that there was equality of suffering in the endurance of capital punishment. Now, this depended a great deal upon

the skill of the hangman. There was, however, only one good hangman in the country, and he was never sent over to Ireland.

Lord *Romney* was in favour of public executions, which, he thought, created a salutary horror in the minds of the spectators.

The Earl of *Malmesbury* said that that House was the worst court in the world to give an opinion upon the effect of public executions. They were highly educated and refined, and, therefore, could not tell what effect a sight which shocked them might have upon the lower orders. Unless they were perfectly certain that this was not a good one, they had better not change the mode of execution which had been in use so long. It had been said, that the publicity of executions tended to create a spirit of bravado on the part of the criminal; but he thought that men about to be hanged generally met their fate in a very becoming spirit. He thought it was equally absurd to say, that hanging a man publicly tended to create a certain morbid sympathy on the part of the public. In his opinion, a great part of the moral effects of an execution would be taken away if it was not accompanied with public disgrace. The numerous cases in which men ordered for execution had tried to commit suicide, shewed how strongly they dreaded this publicity. Although he admitted that a portion of the crowd at an execution behaved riotously, and cared little for what they saw, he believed that nine-tenths of those present were deeply impressed. He felt sure, that privacy of execution was only the first step towards the abolition of capital punishment, and for that reason, if for no other, he was opposed to it.

The Bishop of *Oxford* said the evidence taken, both by the Royal Commission and by a committee of their Lordships, which inquired into this subject ten years ago, was overwhelmingly in favour of private executions. He believed that publicity had no good effect either upon the criminal himself or upon the crowd present. The experience both of the United States and of Prussia was distinctly in favour of private executions. In fact, the whole circumstances of a public execution tended rather to fix the mind upon the noise and other accessories of the scene, rather than upon the one fact of the cutting short of a life by a shameful death. He believed that the effect of the proposed alteration in the law would be favourable rather than detrimental to the preservation of capital punishment, because it would abolish that which now needlessly shocked the moral and civilised feeling of the country.

The committee then divided on the clause, when there were—

Contents	..	..	..	..	75
Non-contents	..	..	..	..	25
Majority	..	..	..	..	50

The clause was therefore agreed to.

On clause 14,

The Duke of *Marlborough* proposed an amendment, to the effect, that as many persons as the precincts of the prison would conveniently accommodate should be admitted to witness an execution.

After a few words from the *Lord Chancellor*, the amendment was withdrawn.

Lord *Teynham* moved to insert in the clause words entitling the representatives of the press to be present at executions.

The *Lord Chancellor* objected to giving any one a right to be present at executions.

The amendment was negatived, and the clause was agreed to.

On clause 16,

Earl *Nelson* moved to insert words providing that the coroner's jury required to sit on the body of a man who had been executed should be summoned from the district where the murder was committed.

The *Lord Chancellor* thought that such a provision would be attended in working with great practical difficulty.

The amendment was negatived, and the clause agreed to.

Clauses 17 to 23 were agreed to.

Clause 24 was struck out.

On clause 25,

Earl *Grey* objected to the repeal of the act of Parliament which inflicted capital punishment on persons who set fire to her Majesty's dockyards and arsenals. This might be done in time of war; and it was monstrous, while retaining the

punishment of death for high treason, to inflict a less punishment for what would then be treason of the worst sort.

The *Lord Chancellor*.—If the act of setting fire to the dockyards amounted to high treason, it would still be punishable by death.

Earl *Grey* said that it might be difficult to prove the treasonable intention.

After a few words from the *Lord Chancellor*,

The Earl of *Ellenborough* said, a man who set fire to the dockyards was a public enemy of the worst kind. His guilt was far greater than that of a murderer of a single individual, for he very probably caused the death of many. They ought not to part with any protection which was at present given to the dockyards and arsenals.

Lord *Taunton* trusted that the words repealing the statute in question would be omitted.

The *Lord Chancellor* consented to omit the words objected to, and the clause thus amended was agreed to.

The remaining clauses were agreed to.

The report of amendments on the Lunacy Acts (Scotland) Amendment Bill was brought up and agreed to.

The Prosecutor Expenses Bill and the Charitable Trusts Deeds Enrolment Bill were read a third time, and passed.

Tuesday, June 19.

THE COURT OF CHANCERY.

The *Lord Chancellor* brought in a bill to amend the administration of justice in the Court of Chancery. At present, while the Master of the Rolls was an equity judge and next in rank to the *Lord Chancellor*, an appeal lay from his judgment to the *Lords Justices*. He proposed that when a vacancy should occur among the *Lords Justices* the Master of the Rolls should become a *Lord Justice*, and that a new Vice-Chancellor should be appointed in his place.

The bill was read a first time.

HOUSE OF COMMONS.—Friday, June 15.

WINDING-UP ACTS.

Mr. *Sheridan* gave notice that on Tuesday next he should ask the Attorney-General whether there was any plan in contemplation by which the business, already very heavy, which had to be attended to by the chief clerk and other officials of the various Chancery Courts, and which was likely to be augmented to a very great extent by the pending applications under the Winding-up Acts, could be aided and assisted; and whether, if any aid were afforded by the appointment of extra officers, it was in contemplation to seek the assistance of the leading accountants who were appointed by such Courts in winding-up cases.

CERTIFICATES OF INDEBTEDNESS.

In reply to a question from Mr. *Hodgkinson*,

Mr. *Gibson* said that the object indicated in the question was, that the Government should bring in a bill to create a new class of securities transferable by endorsement, and of a kind at present unknown to the law. The question had been maturely considered; but he was not able to satisfy himself that any sufficient ground was made out for exceptional legislation in respect to banking and discount companies while undergoing liquidation under the General Companies Act. The official liquidator would not be in possession of the whole state of the account as between the creditors and the companies, so as to be able to give a certificate of indebtedness which would be reliable until the winding up was complete. Under these circumstances he was not prepared to bring in a bill to effect the object the hon. gentleman alluded to.

Tuesday, June 19.

In answer to Mr. *Sheridan*,

The Attorney-General said that the Court of Chancery had sufficient power to regulate the number of its clerks to meet any pressure of business.

The Jurist

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No. 1538, OLD SERIES.—Vol. XXX.

JUNE 30, 1866.

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THE JURIST.

LONDON, JUNE 30, 1866.

THE JAMAICA COMMISSION.

THE Report of the Royal Commission has been published, and we propose to offer some comments upon it. It is natural that we should do so, as we were the first to lay down what turns out to have been the right view of the law upon the subject, in an article of the 6th January; and we have since then, in an article of the 7th April, directed attention to the proceedings of the Commissioners. We now propose to comment upon their Report; and our first observation is, that it is satisfactory to us to find our view of the law distinctly confirmed by their high authority, and adopted by the Crown, as it undoubtedly has been. For it may be remembered, that in our first article we maintained, in opposition to an opinion of very eminent lawyers, which had been published in the papers, that the proclamation of martial law was lawful in time of rebellion, and that it justified deterrent measures—what the Petition of Right called “the summary justice of martial law,” i. e. the execution of prisoners, either on summary inquiry or upon sentence of court-martial. And, singling out the case of Gordon, which had been most commented upon, we contended that his trial was perfectly *legal*, although he had been arrested *out* of the proclaimed district, he having been tried for acts committed, in point of law, *within* the district, by reason of alleged complicity with those who were the active ringleaders of the rebellion. And, further, we maintained that the law gave an immunity to those engaged in carrying out martial law for all acts done under military orders and authority during and under martial law; that a bill of indemnity was only necessary for acts done honestly for the suppression of the rebellion without orders; and that, on the other hand, it would not cover acts done *neither* with orders *nor* honestly for the suppression, but voluntarily and wantonly, and therefore criminal. These latter propositions, which are embodied in the work of Mr. Finlason on the subject (*Treatise on Martial Law*), in which he deals with the case of Jamaica as “a leading case,” are entirely, although impliedly, adopted in the Commissioners’ Report, and are distinctly, and in terms, adopted in the despatch of the Secretary of State, in which he declares that he has taken the advice of the law officers of the Crown. The Commissioners report that the governor was justified in declaring martial law, with the assent of his council, and in carrying it out as it *was* carried out, at all events until the amnesty, although they think it was carried out a little too long; that is, after the rebellion was subdued. That is quite another matter, and is a matter of fact. The law as thus laid down is, that in a time of armed rebellion, if it is really formidable, martial law may be declared and acted on until it is subdued; and martial law as it is described in the Petition of Right, “the summary justice of martial law,” that is, summary military executions. Let it be observed, that it must not

be supposed, that because there is a special statute in Jamaica on the subject, that therefore the case of Jamaica is at all exceptional, for the statute is, and purports to be, *declaratory* of the common law, and imposes *restrictions* on the common-law power—very proper in a colony. It recites that it might be necessary to declare martial law (implying that there *was* the power to do so), and that as its evils were great, it was desirable that it should not be done without the assent of the council. So it clearly put a *restraint* on the common-law power. And as we pointed out in our January article, it is a mistake to suppose that the Petition of Right has anything to do with the question, except, indeed, as a *recognition* of the power to declare martial law; for it only declares that it shall not be acted on *in time of peace*; and the law of treason treats rebellion as war; as does the Crown and Government Security Act. Moreover, the Petition of Right only applies *within* the realm, and is distinctly, and in terms, limited to England. It does not apply to Ireland; but even if it did, it does not apply in time of war. Hence, the 43 Geo. 3, the Irish Rebellion Act, and the more recent act, 3 & 4 Will. 4, c. 4, expressly recognise and reserve “the *undoubted prerogative* of the Crown to declare martial law against open enemies, rebels, or traitors.” And the scope of such acts is to give power to exercise martial law *without* declaring it, or to provide special indemnities. The Commissioners, therefore, in holding martial law legal, only followed out the common law of the land. In the next place, they equally followed out the law in impliedly holding all the executions, either on summary execution or by court-martial, perfectly legal—that is, they do not say a word to imply that they were not so; and they distinctly imply the contrary. They have a paragraph expressly upon courts-martial, and they state that, on the whole, the proceedings were unexceptionable, which, of course implies their legality. And though they think the number of persons summarily executed excessive (for which, by the by, they give no reasons), they do not intimate that any of them were illegal.”

There is, indeed, a passage in which they say that prisoners sentenced to imprisonment or penal servitude were ordered to be released, because there was no power to retain them after the expiration of martial law. But this is an obvious error; for the authority of sentences of courts-martial cannot expire with the courts, or with martial law. The courts of assize are temporary, but the authority of the sentences does not terminate with the existence of the courts; so of courts-martial under ordinary military law. And if courts-martial under military law have any authority at all, it can only be, as explained by all the authorities (cited in Mr. Finlason’s work), because the effect of martial law is to extend military law to the whole population; and *with* military law, the authority of courts-martial.

It is evident that the legality of a sentence must depend upon its character at the time it is *passed*, and of course it cannot become illegal by subsequent events. Even when a law is altered or repealed, that does not, without an express enactment, affect the

legality of a sentence as already passed. And if a sentence were legal when *passed*, it must be always legal, and, if legal, must be valid. The legality of a sentence must depend, primarily, on the authority or jurisdiction of the Court, and next, on its power to pass the particular sentence. Assuming the jurisdiction, and also a discretionary power of sentence, the legality of the sentence cannot be disputed. The legality of martial law establishes the authority to hold courts-martial; and the Commissioners and the Secretary of State not only do not dispute it, but affirm it. The power of the governor to issue a commission, as he did to the general in command, to hold courts-martial on extraordinary occasions, has been recognised in our courts, as part of the prerogative. (*Bradley v. Arthur*, 4 B. & Cr. 292). That a court-martial under martial law has a discretionary power, is self-evident. And that a court-martial, which has a discretionary power, may pass a long sentence of penal servitude, has been distinctly held. (*Rez v. Suddes*, 1 East, 216). The power of the courts-martial, under martial law, to pass such sentences seems to follow. The only principle on which it could be disputed, viz. that martial law—the authority under which the sentence holds—has itself expired, is obviously fallacious, as may be shewn by a simple illustration. The effect of martial law, as all the authorities shew, is, that the whole population are liable to be treated as soldiers. Now, when a man has ceased to be a soldier, does a sentence of a court-martial upon him also cease? Quite the contrary, as is daily seen. Soldiers are constantly sentenced to be dismissed the army with ignominy, and to be imprisoned; and they are *first* expelled from the army, and *then* put into prison to suffer these sentences. As we write these lines, we read an instance in the *Times*.

And we should like to know, again, whether a soldier whose period of enlistment has expired is thereby released from the obligation to suffer a sentence of imprisonment previously imposed by court martial? Most assuredly not. There was, therefore, no legal foundation for the course the Commissioners took in releasing those prisoners from their sentences of imprisonment of penal servitude, unless, indeed, in any instance they considered the sentences excessive, as they seem to imply. They put this release of the prisoners, however, upon the want of power to retain them, which is a ground clearly untenable; and we believe it is so regarded by military authorities. It would be very pernicious if it were to be understood that a sentence of imprisonment passed by court-martial, under martial law, were invalid, for it would be a tremendous temptation to severer sentences. But the Commissioners do not say they are illegal.

And here is their inconsistency. They imply the legality of these sentences in several ways. First, they say, generally, of the whole body of the trials by courts-martial, that they were, with a few exceptions, unexceptionable, which, of course, implies that they were legal; but sentences which cannot be sustained or enforced are scarcely legal. Secondly, they do not say that a single execution under court-martial was illegal; but surely the power to inflict a *capital* sentence involves a power to inflict a *lesser* one? Thirdly,

they do not say that these sentences of penal servitude were illegal when *passed*, but that at the expiration of martial law they ceased to be valid; which is inconsistent with legal principles. There appears to be in this respect a flagrant inconsistency on the face of the Report; of which, however, perhaps, the explanation is this.

They left England under the influence of the erroneous view, to refute which our article of January was written, and according to which *all* trials would have been illegal. They carried on their inquiries throughout upon that assumption; and, therefore, when a witness was stating that he had sat on a court-martial under a warrant from the general, Mr. Gurney said, "It is clear that courts-martial under martial law have no authority, as the Mutiny Act does not apply," forgetting that it has been well settled, that in time of war or armed rebellion the Crown acts by prerogative, and does not require a Mutiny Act, which, indeed, only applies to *military* persons, and *in time of peace*: so that it has nothing to do with the matter. In accordance with this erroneous view, the prisoners were at once all released; and the Report was written, there is every reason to believe, in accordance with that view.

When the Commissioners came to England, however, and their attention was called to the authorities (which, it is obvious, they could not have had time to investigate before), they found they had been misled. Their Report, therefore, which was received on the 30th April, and printed in a day or two, was delayed for nearly seven weeks, during which there was time to alter it, and get the concurrence of Sir H. Storks in the alteration. But then the *prisoners had been released*, and could not be restored, and it was necessary to give some reasons for their release; and, therefore, the illogical and inconsistent excuse above alluded to was assigned, the logical conclusion from which would be, that *all* the trials were illegal. But so far from that, the Commissioners declare all the trials to have been, with a few exceptions, unexceptionable, up to the 30th October—that is, a *week after* the trial and execution of Gordon, and, therefore, *including that case*. It is true, that the Commissioners, in a very equivocal passage, say that some of the evidence in that case would not have been receivable in any court in this country—that is, we presume, regular courts; for the rules of evidence do not bind irregular and inferior courts—at all events, courts martial under *martial law*, as we shewed in our former articles; and they add, "that, in their opinion, the evidence, oral and documentary, was insufficient to support the charge." As there were three charges—treason, sedition, and conspiracy to procure murder—this is not intelligible, especially as the *first* charge certainly was not supportable, because the statutes as to treason only apply within the realm. And as to the other charges, the Commissioners may mean that there was not sufficient *legal* evidence, as to which we refer to what we have already written; or they merely mean that, as a matter of opinion, *they* would not have thought the evidence sufficient, which, of course, would be legally immaterial, as the weight and effect of the evidence was for the court-martial; and nothing is more common than for a judge to say, of a verdict in a civil or criminal case, that he

does not concur in it; but it is not, for that reason, to be disturbed, if there was *any* evidence. Now, this the Commissioners do not say; and they could hardly say so in the face of the sworn evidence of several witnesses, that the prisoner expressly told the blacks that they must rise and massacre the whites. Moreover, there is reason to suspect from the context, that the Commissioners, under the influence of the erroneous notion already alluded to, supposed that it was necessary, in order to justify the execution, to make out a capital offence at common law; and, therefore, as the charge of *treason* could not be sustained, it would be necessary to make out that the prisoner procured the particular massacre; of which, at the trial, there certainly was not evidence. But the notion that it was necessary to prove an offence capital at common law is a complete mistake, supposing martial law in force, as the Commissioners say it was. For under martial law *sedition*, or incitement to sedition or rebellion, if connected as cause and effect with the rebellion, would be a capital offence: so that if Gordon had, in fact, incited, generally, to rebellion, as the Commissioners say he had (although they think he did *not* intend it, which few will believe, and which, besides, would be legally immaterial, (*Rex v. Harvey*, 2 B. & Cr. 257)), he would be capitally punishable under martial law.

And as the Commissioners do not say that trials by court-martial should have ceased until a week after Gordon's execution, and, while recounting carefully all the circumstances of his case, do not say a word as to its *legality*: it results, that the view we took in our January article is, in substance, confirmed by the Commissioners; nor is it at all contradicted by the Secretary of State, who, although he "deplores and condemns" the execution, does so upon a ground clearly mistaken, and which does not imply the slightest doubt as to the *legality* of the trial. For that, it is manifest, would not depend upon whether the man *might* have been tried by a jury, (for that is true of *every* case of trial by court-martial), nor upon the sufficiency of the evidence at common law, in the eyes of acute and experienced criminal judges. The Secretary of State, however, forgot the evidence of two barristers (Walcott and Williams), which shewed that the coloured classes were in an overwhelming majority in the jury-box, and that criminal trials were thoroughly partial, as "the accused walked into the box, certain of an acquittal, whatever the evidence might be;" so that the trial of a popular coloured person for a political offence would have been a farce. As, therefore, the view of the Secretary of State, that the man ought not to have been tried by court-martial, was based upon the assumption that he could have been fairly tried by a jury, which is an entire error, the opinion based on that mistake falls with it. So that, when carefully looked at, their Report establishes the *propriety* of Gordon's execution, and it does not contain a word against its *legality*. And we must notice here a most remarkable inconsistency between their Report on this case, and the despatch of the Secretary of State. They say the prisoner was properly tried by martial law, though they

think the evidence insufficient. He says, in effect (as already shewn), that the prisoner ought not to have been tried by martial law at all. That theirs is the sounder view, and his the wrong one, can be shewn from the very reason he assigns for *his*. The only reason he assigns is, that one of the council suggested the man's trial by a special commission, forgetting however, that this member himself described this suggestion as hasty and off-hand, and that the executive committee, and the Commander-in-Chief, *approved of the execution*.

In two or three instances, among which is the case of Gordon, they take exceptions, and in every instance are themselves in error. Thus, in Gordon's case they undoubtedly thought it necessary to prove complicity in the *particular massacre*; though that was *not* the charge, and it was not necessary that it should have been. So in the other instances. For example, they notice that the evidence of an accomplice was once or twice received "without confirmation." How do they know that? What they mean probably is, that there was no confirmation by express evidence; but there might have been abundant confirmation by the demeanour and conduct of the prisoner, who, for aught that appears, may not have denied the charge, which would be "confirmation" enough, surely, in an informal trial under martial law. Moreover, the rule which requires confirmation of an accomplice, is only a rule of practice in our own country.

Again: they observe, that in one or two cases, after a prisoner had been convicted on the evidence of a rebel, the witness himself was convicted on the evidence of the prisoner. And why not? The like case has occurred in our own courts. Mrs. Rudd, on whose testimony the Perreaus were convicted, was herself tried for the like offence (*Rex v. Rudd*, Cowp. 332); and there could be no legal reason now why they should not have been examined against her, as the wife of one of them was. The objections were taken, that she had been already a witness for the Crown, and that the wife of the convicted prisoner was an inadmissible witness, her interest being to throw the guilt on the prisoner; but both objections were overruled, and it was laid down that the rule that a witness for the Crown shall not be prosecuted, is not one of law, but only of practice, and conditional upon the witness making a *full disclosure*, which, it is obvious, in the cases now referred to, had *not* been done. And in *Winsor's case*, the judges allowed one of the prisoners indicted for murder to be examined against the other.

The truth is, that throughout their Report, in their strictures on the trials by courts-martial, the Commissioners rather applied that high standard of judicial excellence which they themselves exemplify in the discharge of their judicial duties, than the substantial principles of justice, which alone, as they are evidently aware, are obligatory upon courts-martial under martial law. And it is the more to the credit of the officers, that, on the whole, these acute legal writers should have pronounced the trials unexceptionable.

The Commissioners, in their comments, do not appear to have borne in mind the distinction between those rules of *substantial* justice, which are of *universal*

obligation, and the mere non-observance of particular rules of artificial procedure, the mere creature of positive law. They comment, for instance, chiefly, on the fact, that in several of the trials, and especially in Gordon's, the depositions of witnesses, whose "absence was not accounted for," were received; though they notice, that in all of them, as in Gordon's case, there was other and legal evidence.

But they forgot that the examination of witnesses in court, in the presence of the accused, is a mere rule of our procedure, and does not prevail in other and highly civilised countries. For instance, in France, as Mr. Fitzjames Stephens points out (in his *View of the Criminal Law*, p. 164) the depositions of the witnesses are taken behind the back of the accused; and although they are produced in court, he is not at liberty to cross-examine them. Moreover, they forgot that in our own law a deposition is admissible in some cases; and that if the prisoner does not object, it may be admitted in others. And in Gordon's case the principal deposition was that of a witness ill in an hospital, whose deposition, taken before a magistrate, might have been admissible in our own courts, and which was not objected to.

They forgot, likewise, that as the only objection to a deposition is, that it precludes cross-examination, which may be a benefit to the prisoner, but may not be, and which, therefore, he may waive, it can hardly be of the substance of justice if he does *not* insist upon it, nor, necessarily, even if he *does*; and in this instance it was proved that it was *not*, for the witnesses were produced and examined before the Commissioners; and not only was their evidence not shaken, but it was strengthened. So, as to the reception of parol evidence of the contents of a letter, and the like. These were matters which went rather to the weight of the evidence; and if there had *only* been the objectionable evidence, the courts-martial might not have convicted. But in every case there was *other* evidence, in almost every instance, as in Gordon's, *strictly legal* evidence, which, *legally*, was sufficient to sustain the convictions.

On the whole, therefore, the comments of the Commissioners were conceived in a spirit too strict, narrow, and technical; and it is the more to the credit of the officers that the proceedings should on the whole have been pronounced "unexceptionable." We cannot share the view of the *Saturday Review*, that this opinion appears paradoxical. There is nothing to our minds paradoxical in the idea of British officers, who are certain to be men of honour and intelligence, acting under the sanction of an oath, and under the control of their general, and the usages of the service, administering justice fairly and properly. On the contrary, it would be paradoxical if it were otherwise. And for ourselves, seeing what we do of juries, we cannot say that our appreciation of them is so exclusive and excessive, as to dispose us to admit that tribunals composed of British officers must necessarily be unsatisfactory.

The trials, therefore, were perfectly legal; nor, indeed, do the Commissioners venture to say, they were *not* so, although, queerly enough, they insist upon ap-

plying to them the rules of practice peculiar to our own regular criminal procedure. On the whole, we repeat, it is rather to the credit of the officers, that these trials should have stood so severe an ordeal.

There is only one other matter of law involved in the inquiry to which we need advert, and that is the notion that, under martial law, measures of attack or military severity must be limited to those who are found in actual resistance or insurrection, or with arms in their hands, and therefore must cease with actual resistance. There never was a more complete fallacy. The case of actual insurrection or outrage does not require martial law at all. It is laid down by all authorities that the military may, with or without the orders of the magistracy, attack a mob in actual outrage; and under the Riot Act they may do so when the hour has expired, or if the reading of the act is forcibly prevented; and neither at common law nor by the statute is it necessary that the mob should be *armed*. A city may be laid in ashes, a country may be laid in ruins, without any arms; a hundred thousand men with scythes or reaping hooks, or even with clubs, may be as formidable to a small force, as a tenth of their number fully armed. Our old lawyers recognise that war may be levied against the Crown by the terror of numbers as well as by force of arms. Deadly weapons are not necessary to enable an overwhelming number of men to commit the most fearful outrages. Hence the military may, at common law, attack men *unarmed*, if they are in *actual* insurrection. It follows, that martial law must mean something more than that, or it means nothing. What it means can easily be shewn in various ways. To enable the military to act at common law two things must concur; *actual* insurrection and an *adequate military force*. But what if the military force is not adequate to meet the population in rebellion, who, if they *all rise en masse*, must utterly overwhelm them? And suppose they have begun to rise, and are all *ready* to rise, and are rising as fast as the infection of rebellion reaches them?

That is the case which the Commissioners say was the case in Jamaica; and *that* is the case met by martial law. And *how* is it met? By enabling the military to act, as in war, *without waiting for actual insurrection* or outrage, but whenever they can act with advantage against those who are in hostility; that is, in a *state* of rebellion, *ready* to rise, and already, in various ways, aiding and abetting the rebellion. To restrict the military, therefore, under martial law—to measures of severity against those engaged in *actual insurrection*—would be repugnant and ridiculous. The whole object is to *prevent* actual insurrection, and to do this, it is necessary to use measures of military severity—that is, summary executions for *military* offences, in order to *deter* the rebellious population from rising, by the terror thus inspired. This terror is of the *essence* of martial law; without it, it is nothing. This is what the Petition of Right meant by the "*justice of martial law*"—that is, the summary trial and execution of men for military offences. This, we repeat, is of the *essence* of martial law; and we are glad to find that there is not a word, either in the Report of the

Commissioners or the despatch of the Secretary of State, *against* it. On the contrary, the Report clearly recognises it, by pointing out for reprobation particular instances in which men were shot without orders, and without inquiry; and the Secretary of State distinctly recognises the necessity of terror as a part of martial law; and though he says that punishment is not the *object* of martial law, he acknowledges it as one of its *means*, and allows of the use of such means so long as necessary to remove *danger* and to restore *safety*.

It follows, of course, that martial law may be kept up after resistance has ceased, if *rebellion* has not ceased; and if danger of the *renewal* of insurrection is not removed, and thus safety is not assured. Nor do the Commissioners or the Secretary of State, even say that martial law, though it was kept up after resistance had ceased, and after the ringleaders were executed, and after an amnesty was declared, was kept in force too long. All they say is, that it was kept *in full* force too long, and that its operation might have been relaxed, although all its *powers* were retained. This may or may not have been the case; but, at all events, there is a distinct recognition of the lawfulness of martial law in case of rebellion—not merely to meet *resistance*, which does not *require* martial law at all; but for the complete suppression of rebellion, the removal of danger, and restoration of *safety*.

Correspondence.

TO THE EDITOR OF "THE JURIST."

Spanish Town, Jamaica, June 5, 1868.

SIR,—I wish to disavow the accuracy, or any approach to accuracy, of the report of my alleged evidence given before the recent Royal Commission in this island, as it was published in a leading article of THE JURIST, which arrived here two mails ago.

With one only exception, the opinions upon martial law, which I expressed before the commission, were "ex diametro" the opposite of those which are attributed to me in THE JURIST's article. The exception is, as to the effect of the "Petition of Right" in Jamaica.

Oblige me, please, by giving the same prominence to this note of vindication as was given to the article of which I have to complain.

It is almost unnecessary for me to assure you, that I am satisfied that you were led into this mistake by trusting to the account given by some incompetent reporter.

I am, Sir,
Your obedient servant,
ALEXANDER HESLOP,
Attorney-General of Jamaica.

P.S.—I wish to stand by the report of the shorthand writer of the commission. A. H.

[Our observations were founded on a report published in one of the leading papers of the colony, which agreed with the statement of the able correspondent of *The Times*; and so far as we can see, is not in any respect inconsistent with the Report of the Commissioners.]

OFFICE OF LAND REGISTRY.—GENERAL ORDERS, DIRECTIONS, AND FORMS.

(Continued from p. 263).

Memorials of Facts, Descents, Bankruptcies, Judgments, &c.

213. The 83rd section of the act provides that "memorials of descents, deaths, marriages, and of the evidence thereof respectively, and such other memorials and evidence of matters relating to registered lands as the registrar shall, on the same being delivered to him, deem important, shall be registered, but all such documents shall be printed for that purpose."

214. "Where it is required that any birth, marriage, death, descent, intestacy, or other fact shall be entered on the register, the person desiring to register the same shall make an application for that purpose, signed by him or his solicitor, and referring to a memorial signed in like manner, and left in the office, together with such application, and which memorial shall state the number of the estate on the register to which such application relates, and the fact or other particular to be entered on the register, together with the nature of the evidence in support thereof. Such evidence, and evidence of the identity of the person affected thereby as a person named in the register, shall be left in the office." 7.

215. A fee of 2s. 6d. is payable for registration of each memorial, and must be affixed to the application to register the same, except where, as in cases of descents and other transmissions of interest, an *advalem* fee is payable.

216. The form of application and of the memorial to be referred to therein will differ according as the application relates to transmissions of interests on descent, bankruptcy, and the like, or to the registration of mere facts of births, deaths, and the like. In the former case (the fact of the death or bankruptcy having been first registered) the application will be in the form before given [See No. 117], adding thereto a reference to the memorial to be left with such application. In cases of transmission by descent, bankruptcy, or the like (and in all cases of claims by reason of the death of any registered owner), the fact of the death or bankruptcy must be first proved and entered on the register before the title of the heir-at-law or assignee can be entered. The same application and memorial may, however, where practicable, embrace both the fact and transmitted title desired to be registered.

217. The following are forms of such an application and memorial, the case assumed being the death intestate of a registered owner in fee, and the application of his heir-at-law to register:—

No. 40.

LAND REGISTRY.

C. B., of &c., having become entitled to or interested in the estate registered in the name of A. B., of &c., in the hereditaments in the parish of &c., in the county of &c., numbered 40 on the register of estates with an indefeasible title, in the manner following; namely, as heir-at-law of the said A. B., who died on the — day of — [a widower and] intestate, hereby requires the registrar to register the death of the said A. B., intestate [and a widower], and the title of the said C. B., as his heir-at-law, in accordance with the memorial signed by the said C. B., and left herewith.

Dated, &c.

[Signature of C. B. or his solicitor.]

No. 40.

LAND REGISTRY.

Memorial.

A. B., of &c., being a person named in the record of

title as interested in the hereditaments numbered 40 on the register of estates with an indefeasible title, died on the — day of —, intestate [and a widower. *This or a similar statement, if in accordance with the facts, should be made to shew that there is no claim for dower*], leaving the applicant C. B., of &c., his eldest son and heir-at-law; and the said C. B. is now entitled to the interest late of the said A. B. in such hereditaments. C. B. requires the facts and title above mentioned to be entered on the register. [*This or a similar statement, if in accordance with the facts, should be made to shew that there is no claim for dower. C. B. was not married before the year 1834 to a wife now living.*]

The evidence in support of such facts and title consists of letters of administration of the estate and effects of the said A. B., and the following certificates and declarations produced and left in the office of Land Registry by the said C. B.

[*Here refer shortly to the certificates and declarations in proof of the intestacy and heirship, including a declaration identifying the deceased person as the registered owner.*]

Dated, &c.

[*Signature of C. B. or his solicitor.*]

The evidence must in case of an intestacy include a statutory declaration by the solicitor of the deceased, or other person having had confidential relation with him and knowledge of his affairs, shewing that all proper searches and inquiries have been made, and that the deceased did, in fact, die intestate, to the best of the deponent's belief, besides such other evidence in each case as circumstances may render expedient.

218. The 80th section of the act provides, that "on the bankruptcy of any registered proprietor, the assignee or assignees of his estate shall be entitled to be registered in his place."

219. The following are forms applicable to the registration of mere facts of deaths, births, and the like, the case assumed being the death of a tenant for life:—

No. 60.

LAND REGISTRY.

C. D., of &c., being a person appearing on the register as interested in the hereditaments in the parish of &c., in the county of &c., numbered 60 on the register of estates with an indefeasible title, hereby requests the registrar to register the death on the — day of —, of A. B., of &c., whose name appears on the record of title to such hereditaments in accordance with the memorial signed by the said C. D., and left herewith.

Dated, &c.

[*Signature of C. D. or his solicitor.*]

No. 60.

LAND REGISTRY.

Memorial.

A. B., of &c., whose name appears on the record of title as interested in the hereditaments numbered 60 on the register of estates with an indefeasible title, died on the — day of —. C. D., of &c., requires the death of the said A. B. to be entered on the register.

The evidence in support of the death of the said A. B. consists of [*here refer shortly to the certificate and declaration in proof of the death and of identity as a registered owner, which are to be left in the office.*]

Dated, &c.

[*Signature of C. D. or his solicitor.*]

220. The evidence required to be furnished of identity as a registered owner of the person whose death or transmitted interest is to be recorded will usually be a statutory declaration of the fact by a solicitor. If the memorial is of a descent or the like, the value

of the land must be ascertained or stated in the mode before pointed out, and the fees before also stated as payable on transmissions must be paid, the stamps being fixed on the application. A sum sufficient to meet the cost of printing the memorial must also be left in the office.

221. When the evidence referred to in the memorial, and the sum for printing last referred to, has been left in the office, and all stamp and ad valorem fees have been paid, the applicant will be considered as received for registration, and an official note of such application (which, however, may be cancelled if the registration is not completed in due time) will be made in the register, and the registration of the transmission or fact to which the application relates will, when completed, relate back to such official note.

222. On the application being so received, the registrar will consider the memorial and the evidence; all necessary notices (if any) must be given by the applicant under the seal of the office.

223. When the memorial has been settled by the registrar it will be printed, and if the registrar is otherwise satisfied, the registration of the transmission or fact to which the application refers, and of the memorial, will then be completed.

224. "Where it is required that any judgment, crown debt, order, decree, execution, or other liability registered in the office of the senior Master of the Court of Common Pleas, shall be entered in the register, the person desiring to register the same shall make an application for that purpose, signed by him or his solicitor, and referring to a memorial signed in like manner, and left at this office with such application, and which memorial shall contain the number of the estate on the register to which the application relates, and an official copy of the entry in the books of the said office of the Court of Common Pleas relating to such judgment or liability. An affidavit of the identity as a registered owner of the person whose estate is sought to be charged must also be left with the application. On the satisfaction or discharge of any such judgment or other liability, a note thereof shall be entered on the register on an application for that purpose signed by the registered owner whose estate was charged by such judgment or other liability, or his solicitor, and on such notice being given and evidence produced as the registrar may require." 8.

225. The following are the forms of such an application and memorial:—

No. 60.

LAND REGISTRY.

C. D., of &c., hereby requests the registrar to register the judgment [*or otherwise, as the case may be*] mentioned in the memorial left herewith.

Dated, &c.

[*Signature of C. D. or his solicitor.*]

No. 60.

LAND REGISTRY.

Memorial.

C. D., of &c., being interested in the judgment [*or otherwise, as the case may be*], an official copy of the entry of which in the books in the office of the senior Master of the Court of Common Pleas is hereto annexed, and which affects the interests of A. B., of &c., a person appearing from the register to be interested in the hereditaments in the parish of &c., numbered 60 on the register of estates with an indefeasible title, hereby requests the registrar to register such judgment accordingly.

Dated, &c.

[*Signature of C. D. or his solicitor.*]

[*Official copy judgment or other liability to be annexed.*]

226. The affidavit of identity should be made by a

solicitor. Upon the application duly stamped, and the memorial with such office copy as aforesaid annexed, and the affidavit of identity, and a sum sufficient to meet the cost of printing the memorial, being left in the office, the application will be considered as received for registration, and an official note of such application (which, however, may be cancelled if registration is not completed in due time) will be made in the registrar. The registrar will then consider the memorial and evidence; all necessary notices, if any, must be given by the applicant under the seal of the office. When the memorial has been settled by the registrar it will be printed; and if the registrar is otherwise satisfied, the registration will then be completed. In every case before registration is completed, unless the registrar shall otherwise direct, seven days' notice must be given through the post to the registered owner whose estate is sought to be affected by the registration, such notice being sent to his registered address.

227. As to judgments, &c. entered up after the passing of the act 23 & 24 Vict. c. 38 (23rd July, 1860), and before the passing of the act 27 & 28 Vict. c. 112 (29th July, 1864), the judgment creditor should register in this office a memorial both of the registered execution and of the putting in force of the same, as required by that act. And as to judgments, &c. entered up after the passing of the act 27 & 28 Vict. c. 112 (29th July, 1864), the memorial should state that the land has been actually delivered in execution, as required by that act.

228. Application for the entry on the register of the satisfaction or discharge of any registered judgment or liability will be treated as within the 87th section of the act, and the 45th Order of 1862, and a stamp of 7s. must be fixed on the application.

229. The following is a form of application on satisfaction of a judgment or other liability, a memorial of which has been registered:—

No. 60. LAND REGISTRY.

A. B., of &c., hereby requests the registrar to register the satisfaction [or discharge] of the judgment [or other liability, as the case may be] a memorial of which was registered on the — day of —, in accordance with the memorial signed by the said A. B., and left herewith.

Dated, &c.

[Signature of A. B. or his solicitor.]

230. The application should be accompanied by a memorial referring to an official copy of the entry in the book of the said office of the Court of Common Pleas, shewing the satisfaction or discharge of the registered liability, to be also left therewith.

231. The mode of proceeding in the office in respect of recognisances in Chancery and the like will be similar, as far as possible, to that before pointed out with regard to judgments.

Division of Land by Registered Owner.

232. [See No. 276.] Any application under the 28th section of the act for the division into separate estates of any registered land not upon transfer must be in writing, signed by the registered owner, and also (subject to any special directions to be given by the registrar) by all other persons, if any, interested in the estate, or by their respective solicitors. Any land certificate which may have been granted must be delivered up. The applicant must, at his own expense, procure from Colonel Leach new maps for deposit of the different parts of the estate of which separate records are to be made, numbered the same as such separate records are to be numbered; and for this purpose the original deposited map will, at the applicant's request, be sent to Colonel Leach. Upon the separate

maps being made and deposited in this office, statements for registration similar to those required by the 7th section of the act on first registration, must be prepared by the applicant, and warrants must be taken out to attend the registrar to settle the same. In other respects the proceedings will be the same, so far as circumstances will permit, as proceedings on transfers of parts of registered lands. Upon the completion of the separate registrations the record under the original number will be closed, and a note referring to the separate registrations will be made thereon.

Substitution of new Map for deposited Map.

233. "Where, by reason of the division of or dealing with any land registered under a particular number, the description of the land then remaining registered under such number shall, in the opinion of the registrar, be no longer correct or be unnecessarily complicated, and the registrar shall think that the same ought to be corrected, or that a new map thereof ought to be made, the registrar may, on the application and at the expense of the person seised or entitled to the possession of the land, correct such description, and may also cause such new map to be made and marked with the like number as the map deposited in the office; and such description, so corrected, and such new map (such new map being first deposited in the office) shall thenceforth be the description and map of the land registered under such number." 22.

234. The proceedings under the 22nd Order of 1864, will be similar, so far as possible, to those pointed out in No. 232.

As to Dispositions of Land on the Register completed at the Office under the 64th Section of the Act.

235. The 64th section of the act provides, that "on the occasion of any sale, mortgage, or other disposition of registered land, or of any estate thereon, the parties or their agents duly authorised may attend" at this office to complete the transaction.

236. "Previously to any attendance at the office under the 64th section of the act an appointment shall be made for the purpose, at least two days before the day fixed for such attendance, and at the time of making such appointment the person making the same shall leave in the office a concise statement in writing of the nature of the proposed dealing, referring also to the number of the estate on the register. The applicant shall cause all such notices (if any) to be given, and such acts to be done, as the registrar shall direct." 25.

237. The statement in writing of the proposed dealing to be left in the office may be in the form following; that is to say,

No. 40. LAND REGISTRY.

A. B., of &c., having agreed to sell to C. D., of &c., the hereditaments [or part of the hereditaments, as the case may be] numbered 40 in the register of estates with an indefeasible title, in the office of Land Registry, the said A. B. and C. D. are desirous to complete the transaction at the said office.

Dated, &c.

[Signatures of A. B. and C. D., or their respective solicitors.]

238. Before any attendance at the office under the 64th section of the act, a copy of the document proposed to be executed, prepared in one of the statutory forms, and describing the land by reference to its number and description on the register, must be left in the office.

239. "Upon any attendance at the office under the 64th section of the act, and the 25th of the General Orders of the 1st October, 1862, the applicant shall

bring into the office the document proposed to be executed, prepared in one of the statutory forms. An affidavit of the identity of the conveying or disposing party as a registered owner shall be furnished. Such affidavit shall be made by the solicitor, unless the registrar shall for any reason think proper otherwise to direct." 1.

240. This affidavit or declaration will usually be made by the solicitor attesting the execution of the conveyance or other document in the office.

241. An additional fee of 7s. is payable on every conveyance or other document executed at the office under the 64th section of the act.

242. "If the registered owner shall not personally attend at the office he must be represented by an agent, duly authorised to execute the proposed document, who shall personally attend at the office. A power of attorney prepared in the statutory form, authorising such agent to make the proposed conveyance or disposition, and an affidavit of the execution of such power of attorney, and of the identity of the person executing the same as a registered owner, and of the identity of such agent as the person named in the power of attorney, shall be left in the office. Such affidavit shall be made by a solicitor, unless the registrar shall for any reason think proper otherwise to direct." 2.

243. Every conveyance or other document executed in the office under the 64th section of the act must be executed in the presence of one of the clerks of the office, all stamps and ad valorem fees being first paid. It must then, for the purpose of registration, be left in the office. The conveyance or other document will then be considered as received for registration.

244. "A statement in writing of the terms in which the final entry of the document in the registrar is proposed to be made shall be prepared, and shall be settled by the registrar, and any objection made to such settlement shall be proceeded on in like manner as is provided for by the 13th of the General Orders of the 1st October, 1862, with reference to the original registration." 3.

245. The forms of assurances, of powers of attorney, and of affidavits or declarations, and the directions hereinbefore contained with reference to dispositions generally, for searches, for ascertaining the fees payable in respect of the lands dealt with, for printing the documents proposed to be registered, for the stamping or indorsing of originals, for the making new maps and for separate registrations, where part only of any registered land is dealt with, and for making the original map accordingly, for the making of the preliminary official note, and for the preparation and settlement of the statement of the final entries for the register, and for the completion of the registration generally, apply also to dispositions completed at the office under the 64th section of the act.

Restraint of Conveyance.

246. The 93rd section of the act provides, that "where the registered proprietor of any land or charge is desirous, for his own sake, or at the request of some person beneficially interested in such land or charge, to place restrictions on transferring or charging such land or charge, such proprietor may, upon application to the registrar, direct that no transfer shall be made of, or charge created on, such land or charge, unless the following things, or such of them as he may prescribe, are done; that is to say—

Unless notice of any application for a transfer or creation of a charge is transmitted by post to such address as he may specify to the registrar;

Unless the consent of some person or persons to be

named by such proprietor is given to the transfer or creation of a charge;

Unless some such other matter or thing is done as may be required by the applicant, and approved by the registrar."

And the 94th section, "that the registrar shall thereupon make a note of such directions on the record of title of such proprietor, or otherwise as he shall think fit, and no transfer shall be made or charge created except in conformity with such directions; and any such directions may at any time be withdrawn or modified at the instance of all the persons for the time being appearing to the registrar to be interested in such directions, and shall also be subject to be set aside by the order of a judge of the Court of Chancery."

247. "Every application under the 93rd section of the act shall be signed by the applicant or his solicitor, and shall state the land or charge to which it relates, and refer to the number of the estate on the register, and shall state the particular restriction sought to be placed on the register, and such other particulars as will enable the necessary entry to be made on the register." (30).

248. "Any application to withdraw or modify any such restriction shall also be signed by the person making the same, and shall state all necessary particulars, and be supported by satisfactory evidence." (31).

249. Upon any application being left under the 93rd section, an appointment should be obtained to attend the registrar for his consideration thereof. A stamp of 1l. must be affixed on any application under the 93rd section for the entry of any restriction, and of 7s. on any application for the removal of such restriction.

250. The following are respectively forms of applications by a proprietor restraining transfer or charge (A), and by persons interested withdrawing or modifying such restraint (B):—

No. (A). LAND REGISTRY.

A. B., of &c., hereby directs that no transfer shall be made of, or charge created on, the lands [or, the charge on the lands, *as the case may be*] in the parish of —, in the county of —, numbered — on the register, of which lands [or charge] he is registered proprietor, unless [*here insert nature of restriction, having regard to the 93rd section of the act.*]

Dated, &c.

[*Signature of A. B. or his solicitor.*]

No. (B). LAND REGISTRY.

We, A. B., of &c., C. D., of &c., and E. F., of &c., request that the restriction on transfer of, or charge on, the lands [or, of or on the charge on the lands, *as the case may be*] in the parish of —, in the county of —, numbered — on the register lodged by A. B. [or otherwise, *as the case may be*] on the — day of —, may be withdrawn or modified in the following manner [*here state the nature of the modification, if required*]; and we hereby state that our right to make this application arises as follows [*here state applicant's right to reply*].

Dated, &c.

[*Signatures of A. B., C. D., and E. F.*]

Caution or Caveat after Registration.

251. The following are the provisions of the act with respect to caveats after registration; that is to say—

Sect. 96. "Any person interested under an agreement or otherwise howsoever in any land or charge registered in the name of any other person may lodge a caveat with the registrar, to the effect that no disposition of such land or charge be made until notice has been served upon the cautioner."

Sect. 97. "The caveat shall be supported by an affidavit made by the cautioner or his agent in such form as the registrar shall direct, stating the nature of the interest of the cautioner, and such other matters as may be required by the registrar."

Sect. 98. "After any such caveat has been lodged in respect of any land or charge the registrar shall not register any disposition thereof until he has served notice on the cautioner, warning him that his caveat will cease to have any effect after the expiration of twenty-one days next ensuing the date of such notice; and after the expiration of such time as aforesaid the caveat shall cease, unless an order to the contrary is made by the Court of Chancery, and upon the caveat so ceasing the land or charge shall be dealt with in the same manner as if no caveat had been lodged."

And sect. 99. "If before the expiration of the said period of twenty-one days the cautioner, or some other person on his behalf, appears before the registrar, and enters into a bond with sufficient security, conditioned to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed, the Court of Chancery may thereupon, if it thinks fit so to do, make an order on the registrar, requiring him to delay registering any disposition of the property for such further period as is mentioned in the order."

252. "Every caution or caveat lodged under the 96th section of this act shall be signed by the party lodging the same, or his solicitor, and shall contain an address in Great Britain at which such party is to be served with the notice referred to in the 98th section, and also a description of the land or charge to which the same applies, and his interest therein, and the number of the estate on the register." (32).

253. A stamp of 1*l*. must be fixed to every caution lodged in the office.

254. The following is the form of a caveat after registration, viz.—

No. —. LAND REGISTRY.

E. F., of &c., being interested under an agreement dated the — day of — [or state the nature of interest], in the lands in the parish of —, in the county of —, registered in the name of —, of the parish of —, in the county of — [or, in the mortgage for £—, dated the — day of —, registered in the name of —, of the parish of —, in the county of —, on the lands in the parish of —, in the county of —, or otherwise, as the case may be], numbered — in the registry, requires that no disposition of such land [or charge] shall be made until notice has been served on him.

The address of E. F. for service is at —, in the county of —. Dated, &c.

[Signature of E. F. or his solicitor.]

255. The affidavit in support of the caveat must testify to the interest of the cautioner in the lands in question.

256. The following is the form of notice of registration to be served on the cautioner:—

No. —. LAND REGISTRY.

Take notice that the caution or caveat lodged by you in this office on the — day of —, 18—, requiring notice to be given to you before the disposition of the lands registered in the name of —, of —, in the county of —, and numbered — on the registry [copying the terms of the caution or caveat], will cease to have effect after the expiration of twenty-one days from the date hereof, unless an order to the contrary be made by the Court of Chancery.

Dated, &c.

[Signature of registrar and seal of office.]

To &c.

257. The 100th section of the act provides, that "if any person lodges a caveat with the registrar, he shall be liable to make to any person who may have sustained damage by the lodging of such caveat, such compensation as a judge of the Court of Chancery shall deem just."

Removal of Land from the Register.

258. By the 34th section of the act, "the registered proprietor of land may, with the consent of all persons appearing by the register to be interested in such land, remove the same from the register, and thereupon the register shall, as respects such land, be deemed to be closed."

259. "If any registered proprietor of land shall desire to remove the same from the register, he shall make application for that purpose, signed by himself, and satisfactory proof shall be given of the consent of all necessary parties to such removal; and previously to such removal, every land certificate, or certificate of incumbrance granted with reference to such land, shall be delivered up to the registrar, and deposited in the office." (37).

260. A stamp of 1*l*. must be affixed on this application.

(To be continued).

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THE JURIST.

LONDON, JULY 7, 1866.

THE Companies Act, 1862 (25 & 26 Vict. c. 89) may appear at first sight to have been a great improvement to the statute book; without doubt it was good policy to attempt to weed out the numerous and scattered acts which referred to joint-stock companies, and to consolidate their provisions into one statute; but the task might have been performed in a better manner; and the recent case of *Prince v. Prince* (12 Jur., N. S., part 1, p. 221) calls attention to what seems a serious omission.

Some of the older statutes repealed by the third schedule (first part), contained provisions regulating the mode in which companies formed under them should contract. Thus it was necessary, with certain exceptions, that every contract entered into by a company, completely registered under the 7 & 8 Vict. c. 110, should be in writing, and signed at least by two of the directors, and should be sealed with the common seal, or signed by some officer, to be thereunto expressly authorised by some resolution of the board of directors, applying to the particular case; in the absence of such requisites, the contract was void, except as against the company. The exceptions were, every contract for the purchase of any article, the consideration for which did not exceed the sum of 50*l.*, or for any services, the period of which did not exceed six months, and the consideration for which did not exceed 50*l.*; these might be entered into by any officer authorised by a general by-law in that behalf. And there was a further exception as to bills of exchange and promissory notes, which it was necessary to accept and make, by and in the names of two of the directors as directors, and to countersign by the secretary or other appointed officer (7 & 8 Vict. c. 110, ss. 44, 45). Again: contracts entered into by companies registered under the Joint-stock Companies Act, 1856 (19 & 20 Vict. c. 47), might (s. 41) be made as follows:—"Any contract which, if made between private persons, would be by law required to be in writing; and if made according to English law, to be under seal, may be made on behalf of the company in writing under the common seal of the company; and such contract may be in the same manner varied or discharged: any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company; and such contract may in the same manner be varied or discharged: any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company; and such contract may in the same way be varied or discharged: and all contracts made according to the provisions herein

contained, shall be effectual in law, and shall be binding on the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be." Sect. 43 contains provisions as to negotiating promissory notes and bills of exchange. Sect. 41 was not quite complete; it did not expressly declare either that contracts which, if made between private persons, would by law be valid, although made by writing only, should be valid when made by deed as well as when made by writing; or that contracts which, if made between private persons, would by law be valid, although made by parol only, should be valid when made either by deed or writing, as well as when made by parol; but possibly, if the points had arisen, it might have been held that the words of the section allowed the construction which would have been necessary to meet the above cases. But the Companies Act, 1862, contains no provisions regulating the mode in which companies registered under it shall contract. In *Prince v. Prince* a deceased person, after the passing of that act, had entered into a contract not under seal, for the sale of land to a company registered under the Joint-stock Companies Acts, 1856, 1857. The contract was valid according to the requirements of sect. 41 of the 19 & 20 Vict. c. 47, and the question was, whether the power of contracting contained in that section still existed as to this company. Notwithstanding the Companies Act, 1862, which, by its 176th section, is made to apply to companies registered under the Joint-stock Companies Acts, 1856, 1857, Lord Romilly, M. R., held that the power to contract not under seal did exist as to this company, and that the contract was valid; for the 176th section of the Companies Act, 1862, is not disabling in its operation; and although the 205th section repealed the Joint-stock Companies Act, 1856, 1857, yet the 206th provides, that no repeal thereby enacted shall affect any right or privilege acquired under any act thereby repealed; and the privilege to enter into a contract not under seal through an authorised agent was held to be a right which the company in question had acquired under the Joint-stock Companies Act, 1856.

But it seems clear, that if the company had been formed after the coming into operation of the Companies Act, 1862, the contract would not have been capable of being enforced; every company registered under that act is a body corporate, capable of exercising all the functions of an incorporated company (sect. 18); and the general rule mentioned by Lord Romilly in his judgment is, that except by legislative enactment, a company cannot enter into a contract, except under seal; the only exceptions consist of those contracts which are unimportant and of frequent occurrence, or, as it has been stated, of those contracts which are necessary and incidental to the purposes for which the corporation was created (*Henderson v. The Australian Royal Mail Steam Navigation Company*, 1 Jur., N. S., part 1, p. 830); but in *Prince v. Prince*, the contract being for the sale of land for the sum of 22,000*l.*, and not being, as far as appears from the report, a matter within the purposes for which the company was created, in all probability would have

been void under the Companies Act, 1862. Nor was there any charge of fraud, or any part performance, to call in aid a court of equity. It may possibly be suggested, that though the Companies Act, 1862, omits to regulate the mode of contracting, and appears to leave companies registered under it with the disabilities of corporations at common law, yet the mode of contracting by such companies is provided for by the Companies Clauses Act, 1845 (8 Vict. c. 16). Sect. 97 contains provisions as to contracts not dissimilar to those contained in the Joint-stock Companies Act, 1856, sect. 41. Sect. 1 of the Companies Clauses Consolidation Act enacted, that it should apply to every joint-stock company which should, by any act which should thereafter be passed, be incorporated for the purpose of carrying on any undertaking; and it should be incorporated with such act. It is true, that every company registered under the Companies Act, 1862, is incorporated by it for the purpose of carrying on an undertaking; and it might be urged, that so much of the Lands Clauses Consolidation Act, 1845, including sect. 97, as is not inconsistent therewith, might be read together with it, and as part of it; and hence companies registered thereunder could enter into simple contracts. But such a construction seems inadmissible—first, because the words “special act,” used in the 8 Vict. c. 16, seem to contemplate only cases where a company is constituted by a statute passed expressly for that purpose; secondly, such a mode of construing the two acts does not appear to have been the intention of the Legislature, and would probably give rise to great confusion. No suggestion of the kind was made in the course of the argument or judgment in *Prince v. Prince*.

On the whole, this point is well worthy of the attention of the Legislature; the power which a corporation enjoys at common law to contract not under seal is so limited, that unless joint-stock companies have greater privileges allowed to them, their utility will be seriously diminished; and measures ought to be forthwith taken to remedy so grave an omission in the Companies Act, 1862.

Reviews.

Legal and Equitable Rights and Remedies as to Trees and Woods. By RICHARD DAVIS CRAIG, Esq., one of her Majesty's Counsel. 8vo., pp. 208. [Murray.]

The Law relating to Boundaries and Fences. By ARTHUR JOSEPH HUNT, Esq., of the Inner Temple, Barrister-at-Law. 12mo., pp. 280. [Butterworths.]

WE learn from Mr. Craig's Preface to his very acceptable work, that we owe its existence to a miscalculation of the time and labour which would be required for its completion. It originated in an investigation for professional purposes, and was carried on from a desire to lighten the labour of similar investigations by others. “The great amount of trouble,” says Mr. Craig, “which its prosecution has occasioned to him, confirms his belief that he will have saved much trouble to his friends by bringing together materials so widely scattered, and arranging them in some kind of order.” As a matter of course, a book so written, and by so able a lawyer, upon a subject so important as the “excrescences provided by nature for the payment of debts,” must be valuable and in-

teresting; and it is much to be wished that other mature and experienced lawyers would follow the example set by Mr. Craig.

The principal divisions of the subject are as follows:—Rights between lessor and lessee; between tenant for life and remainderman; between defeasible and executory tenants in fee, tenants in common, and joint tenants; mortgages and mortgagor; lord and copyholder; patron and incumbent; Crown and dean and chapter; Crown and bishop; rights as to charity lands; between real and personal representatives; of private owners within forests and closes; property in windfalls; property in trees wrongfully cut; when waste is legal or equitable; property in trees cut with the sanction of the Court; remedies at law and in equity; liability to poor rate; liability to improvement of roads; succession duty; protection of trees, &c. by criminal law; and statutory provisions for growth of timber.

Mr. Craig has taken great pains in collating the various reports and notices of the earlier cases in equity on waste of timber, and his statements of the authorities, though brief, are generally so pithy, as to supersede the necessity of any reference to the reports for details.

“Upon the right of an infant tenant in tail, or rather his guardian,” says Mr. Craig, “as between himself and those in remainder to commit waste in timber, it is believed there is but one decision expressly in point, and that is a case called *Mr. Savil's* or *Saville's*, of which there is no detailed report.” After stating the several notices of that case in other cases, to the effect that the Court refused to restrain the guardian of an infant tenant in tail in possession from cutting timber, although the infant was in a bad state of health, and not likely to live to full age, and referring to the obsolete practice of allowing infants to suffer recoveries under the sanction of the Privy Seal, and to the rule in *Burgess v. Maubey* (Turn. & R. 167), that an infant tenant in tail must keep down the interest on mortgages, Mr. Craig contends that an infant tenant in tail, who cannot suffer a recovery (or do what is now equivalent), and cannot make the estate his own, ought not to be put upon the same footing as one who can. He adds,

“If it should be thought that an infant tenant in tail may commit waste generally, there will still be the question whether he is not as much liable to be restrained from equitable waste, as we have seen, that a tenant in tail after possibility is, or as we shall see, that a tenant in fee subject to an executory devise over is.

“It is no objection to the argument against the right of an infant tenant in tail in possession or his guardian to commit waste, that if waste is unlawfully committed by a tenant for life in possession, precedent to an estate tail vested in an infant, the infant will be entitled to the property of the waste, because he is owner of the first existing estate of inheritance; for the right of the infant in such a case is an accident arising from the necessity at law of there being some one in whom the waste may vest, and who may immediately sue for it. By the general rule of law, that person must be the owner of the first vested estate of inheritance for the time being.

“A little consideration will shew that flagrant abuses, without redress, may easily be made of the right of an infant tenant in tail to commit waste. He may be a sickly or a sinking child, with his father for his guardian, or, if his father be dead, his mother, without brother or sister; in either of which cases his whole personal estate will pass on his death to his guardian as his administrator and sole next of kin. The evil is much greater than if he were tenant in fee, for in that case an abuse of the guardian's powers

by converting real estate into personal for his own benefit, by felling timber, will be redressed; by compelling him to refund the ill-gotten gain for the benefit of the inheritance; as may be seen in the case of *Tullii v. Tullii* (reported in Denham, 322; S. C., Amb. 370, Blunt's ed. and notes); but in the case of an infant tenant in tail, if his right to commit waste through his guardian be admitted, there can be no such redress." There can be no such redress, because the redress in the case of the infant tenant in fee is by restoring the value of the timber as a part of his real estate; but in the case of the infant tenant in tail, the value of the timber cannot be taken from his personal estate, without giving it away from him altogether.

Mr. Hunt has done good service by collecting and arranging in a clear and convenient manner a large amount of information which lies scattered throughout the old text-books, the reports, and the statutes, and to which there has hitherto been no complete index or clue. He sets forth the matter under the following heads:—1. The law of boundary as it affects the rights of property on the sea-shore, navigable and private rivers, lakes, &c., alluvion and reliction. 2. Fences in general. 3. The liability of railway companies to fence their lands. 4. Boundaries and fences in relation to mines and quarries. Duties of mine-owners in relation to owners of the surface and the public. Barriers between mines. 5. Party walls and fences. 6. Rights and duties of landlords and tenants in respect of boundaries and fences. 7. Boundaries and fences of ecclesiastical property. 8. Boundaries of parishes. 9. Boundaries in relation to tithe commutation. 10. Boundaries and fences in relation to highways. Encroachments. 11. Boundaries as affected by the Inclosure Acts. 12. Trees and hedges on boundaries. 13. Boundaries under the Acts for Registration of Title. 14. Evidence in cases relating to boundaries. 15. Remedies in cases of disputed boundaries or injuries to fences. 16. Larceny of, and malicious injury to, fences.

Mr. Hunt appears to have ransacked the American as well as the English treatises and reports: but his work is not a mere compilation; he has investigated for himself, and stated the results concisely and clearly.

BOOKS RECEIVED.

The Patentees' Manual. Being a Treatise on the Law and Practice of Letters Patent, especially intended for the use of Patentees and Inventors. By James Johnson, of the Middle Temple, Barrister-at-Law, and J. Henry Johnson, Assoc. Inst. C. E., Solicitor and Patent Agent, Lincoln's-inn-fields and Glasgow. Third edition, revised and enlarged. 8vo., pp. 466.

The Magnitude and Importance of Legal Science. An Address at the Opening of the Law School of the University of Chicago, Sept. 31, 1859. By David Dudley Field.—New York, W. J. Read.

A Letter to the Right, Hon. the Lord, Redesdale, Chairman of Committees of the House of Lords, on the manifold Losses and Injuries sustained by the Owners of Riparian Rights, and Water Privileges, through the incompleteness of the Standing Orders of Parliament, and on the extraordinary assumption and usage of the absolute Rights of Landed Proprietors to the Rain or Surface Water falling from the Clouds, by Water Companies and others. By Matthew Bullock Johnson, Civil Engineer.

Local Courts and Tribunals of Commerce. By R.

M. Pankhurst, LL.D. Read before the Manchester Statistical Society, April 11, 1866.—Manchester, Simons & Co.

OFFICE OF LAND-REGISTRY.—GENERAL ORDERS, DIRECTIONS, AND FORMS.

(Continued from p. 275).

PART III.—GENERALLY AS TO PROCEEDINGS IN THE OFFICE.

Conduct of Business.

261. "Any assistant registrar may act for the registrar." (38).

The Register of Indefeasible Titles.

262. The 20th section of the act provides that, "subject to any exception, qualification, or condition mentioned in such record of title, and to any right or interest thereby reserved, and to any registered charges or incumbrances, and to such charges and interests (if any) as are herein declared [*See No. 269*] not to be incumbrances, the persons originally and from time to time named and described in such record of title as aforesaid, shall, for the purposes of any sale, mortgage, or contract for valuable consideration by such persons respectively, be and be deemed to be as from the date of registering such record by the registrar, or from such time as shall be fixed by him therein, absolutely and indefeasibly possessed of, and entitled to such estates, rights, powers, and interests as shall be defined and expressed in such record against all persons, and free from all rights, interests, claims and demands whatsoever, including any estate, claim, or interest of her Majesty, her heirs and successors."

263. The 19th section of the act provides, that "the names of the persons entitled to the proceeds of any trust for sale of the lands so registered, or to any principal money to be raised by virtue of any charge under the trusts of any estate or term, shall not be entered in the register unless the registrar shall think fit so to do, but the estate of the trustees shall be defined and the purpose of the trust shortly described."

264. "Where land is subject by will to a charge of debts or legacies, the names of the creditors or legatees shall not be entered in the register unless the registrar shall think fit to do so; but the nature of the charge and the persons to raise the same, shall be entered or described in the register." 23.

265. "Where moneys are payable to trustees having power to give receipts for the same, the names of the persons beneficially entitled to such moneys shall not be entered in the register, unless the registrar shall think fit so to do; but the nature of the trust shall be shortly stated or referred to, and the names of the trustees shall be entered on the register." 24.

266. The 29th section of the act provides, that "if land registered, or proposed to be registered, or any part thereof, be subject, or be agreed to be made subject, to any condition, as, for example, that it shall not be built upon or used in a particular manner, or any other legal condition, notice thereof shall be entered in the record of title, and any transfer, demise, or charge of such land shall be subject to such condition."

267. "The registrar shall enter all leases and agreements for leases (not registered under the 26th section of the act), which are to be registered under the provisions of the act in the register of mortgages and incumbrances; but no under-lease or assignment of or dealing with the interest of the lessee, only under such leases or agreements, shall be entered in the register, unless the registrar shall think proper to make such entry." 25.

268. The 26th section of the act relates only to the separate registration of leasehold estates for long periods. [See No. 100.]

Charges and Liabilities not to be deemed Incumbrances.

269. The 27th section enacts, that "the following charges and liabilities shall not be deemed incumbrances within the meaning of this act; namely,

1. Land tax, succession duty, tithe rentcharges, rents payable to the Crown:
2. Public rights of way, liability to repair highways by reason of tenure, rights of way, watercourses, and rights of water, and other easements or servitudes, rights of common, manorial rights and franchises:
3. Leases, or agreements for leases, not exceeding twenty-one years, where there is an actual occupation under the same:

Nevertheless, where any such charges or liabilities appear or are discovered in the course of proceeding prior to registration, the registrar shall, in such manner as he shall think fit, notice in the register the existence of such charges or liabilities."

Doubtful Questions.

270. [See No. 25.] The 17th section of the act provides, that "if in making up, or afterwards continuing, such record of title as aforesaid, any question shall arise as to the true construction or legal validity or effect of any deed, instrument, or will, or as to the persons entitled, or the extent or nature of the estate, right, or interest, power or authority of any person or class of persons, or the mode in which any entry ought to be made in the record of title, or any doubtful or uncertain right or interest stated or dealt with by the registrar, it shall be competent for the registrar, or for any of the parties interested, to refer the same to a judge of the Court of Chancery: If on such reference the judge, having regard to the parties appearing before him, shall think proper to decide the question, he shall have power to do so, or to direct any proceeding at law or in equity to be instituted for that purpose, or at his discretion, and without deciding such question, to direct such particular form of entry to be made on the record of title as under the circumstances shall appear to be right."

271. And the 18th section, that "in any case described in the preceding section, the registrar may, at the request of the parties or at his own discretion, refer in the record of title to the deed, will, or other instrument for the estates and interests of the parties, instead of setting out or describing the same: provided always, that in every case in which such deed, will, or other instrument shall be so referred to, a copy thereof (which shall be verified and printed in the manner hereinafter directed with respect to deeds or instruments conveying, mortgaging, or charging the estate or interest of any proprietor on the register), shall be delivered to the registrar by the parties applying for registration, and shall be preserved in the registry; and for the purposes of any subsequent sale, mortgage, or contract for valuable consideration by any person appearing thereby to have any estate or interest in the land to which the record of title so made up shall relate, such copy shall be conclusive evidence of the contents of the said deed, without the production of the original thereof."

272. And the 89th section, that "if, on the examination of any title, it shall appear that the land, or any part of it, is subject to any money charge or incumbrance, the ownership of which is not ascertained, or the right to which is doubtful or uncertain, or to any doubtful or uncertain right or claim which may be estimated or compensated by money, and does not involve a right to the land itself otherwise than as a

security for money, the case may, at the request of the applicant for registration, be referred to a judge of the Court of Chancery sitting in chambers, for the purpose of determining whether such right or claim, and the costs of any party entitled by virtue thereof, can be justly provided for by payment of money into court, and if so, to fix the sum to be so paid in, and direct the investment and application of the interest thereof; and after such payment shall have been made, the land and the title thereto shall be wholly discharged from such right, claim, charge, or incumbrance, as fully as if the same had never existed."

273. And the 92nd section, that "if, in any proceeding under this act, any question shall arise respecting the priority of any charges or incumbrances, claims or interests, it shall be competent to the registrar to report the same to a judge of the Court of Chancery, who shall have power to summon all parties interested to attend him either in court or at chambers, and to decide all questions touching the priority and relative rights of the parties, as fully as if they were parties to a suit instituted for the purpose."

Appeal, Application, or Reference to the Court of Chancery.

274. The 134th section enacts, that all applications to be made to the Court of Chancery, under the act, may be made by summons in chambers, and points out the mode of appeal from the judge's decision. The Master of the Rolls is the judge to whom the duties vested in the Court of Chancery in relation to the act have been assigned.

275. The practice is, on any reference or appeal to the Court, for the parties to leave in the office a statement of the facts of the case, and the points at issue, for the approval and signature of the registrar, and for the Court to proceed upon such statement.

Separate Registrations of Land.

276. [See Nos. 44, 232.] The 28th section provides, that "land entered on the register may, at the option of the proprietor, be registered as one estate or as separate estates; but the particulars of each estate, and any transactions relating thereto, shall, subject to any regulations to the contrary that may be made by General Order, form a separate record in the register, distinguished by a separate number, or in such other manner as the registrar may determine."

Value for the Purposes of the 127th and 128th Sections of the Act.

277. "In the case of the registration of land, or of any transfer of land, on the occasion of a sale, the registrar may require evidence, that the sum mentioned in the instrument of sale as the purchase money is bonâ fide the full consideration for which the lands were contracted to be sold, and he may refuse to make such registration until he has been satisfied as to the amount or value of the bonâ fide consideration for which such lands were contracted to be sold." (35).

278. [See Nos. 84, 130, 132.] "In the case of the registration of land, or of any transfer of land, not upon a sale, and in the case of a land certificate, the value of the land shall, if required by the registrar, be stated in an affidavit made by or on behalf of the applicant, and may, if the registrar shall think fit, be ascertained by a computation made by him from the rental of the land, or by such other means as shall be satisfactory to the registrar, or may be settled by agreement between him and the applicant; and in the case of the registration of any charge, or transfer of charge, by way of annuity or yearly sum, the value thereof shall be ascertained by the registrar by affidavit, or by such other means as shall be satisfactory to him, or may be settled by agreement." (36).

Stamping Deeds relating to Registered Land.

279. By the 91st section, "when an estate is entered on the register, whether with or without an indefeasible title, all such deeds and evidences of title as shall be produced to the registrar, under any of the provisions aforesaid, shall be stamped or indorsed in such a manner, under the direction of the registrar, as to give notice to any person to whom such deeds or instruments may be afterwards produced, that the land, or some portion of the land comprised therein, has been registered under this act." [See Nos. 88, 158.]

Stamps.

280. "In all cases the party applying for registration shall produce evidence from the proper officer, shewing that all stamp and other duties imposed by any statute have been duly paid and satisfied." (43).

281. "All stamps shall be stamped or affixed, at the expense of the parties liable to pay the fees, on or to the parchment or paper on which the proceedings in respect whereof such fees are payable are written or printed, or which may be otherwise used in reference to such proceedings. And where any of such fees are payable in respect of any matter or thing to be done, and it is not customary to use, in reference to such matter or thing, any written or printed document or paper whereon the stamp could be stamped or affixed, the party or his solicitor requiring such matter or thing to be so done shall make application for the same by a short note or memorandum in writing, and a stamp denoting the amount of the fee so payable shall be stamped on or affixed to such note or memorandum." (48).

282. "Every officer of the office of Land Registry who shall receive any document to or upon which a stamp shall be affixed or impressed under the act or these Orders shall, immediately upon the receipt of such document, deface such stamp thereon by writing or impressing upon such stamp the words "Land Registry;" and no document so stamped shall be filed or deemed as finally accepted in the office until the stamp thereon shall have been so defaced, and it shall be the duty of the party presenting such document to see that such defacement has been duly made." 44.

283. By the 129th section of the act it is provided that all fees payable in respect of registration shall be received by stamps, and not in money, and that when any fee is payable in respect of a document, a stamp denoting the amount of fee shall be affixed to such document. No document requiring a stamp will be received in the office until stamped. Stamps are not sold at the office, but all office stamps may be obtained of the Messrs. Fry, law stationers, 14, South-square, Gray's-inn, London. No money can be received at the office on account of stamps. In country cases Messrs. Fry will, at the applicant's request and risk, forward the necessary stamps to him by post, on receiving a stamped envelope properly addressed, with a remittance. In country cases, where any stamped document is received at this office, through the post, the person forwarding it will not be required personally to see to the defacement of the stamps.

Examination of Married Women.

284. The 115th section of the act provides for the examination of married women in the event of their being necessary parties to any application or other proceeding under the act, and also provides that "a married woman entitled to her separate use, and not restrained from anticipation, shall for the purposes of this act be deemed a feme sole."

285. "When any married woman is to be examined under the 115th section of the act in the case of any application to the office of Land Registry, such appli-

cation shall be in writing, and the examination of the married woman shall be made after such application is prepared; and in the case of any consent to be given by any married woman, or of any act to be done by her, or of her becoming a party to any proceeding in the office under the said act, the matter or thing to which her consent is to be given or the act to be done by her, or the proceeding to be taken, shall be reduced into or stated in writing before such examination be made, and the persons by whom such examination is made shall certify the result thereof to the satisfaction of the registrar. Such certificate may be to the effect following; that is to say,—

"These are to certify, that on the — day of —, 18—, before us —, two of the perpetual commissioners appointed for the county of —, for taking the acknowledgments of deeds by married women, pursuant to an act passed in the 3 & 4 Will. 4, intituled 'An Act for the Abolition of Fines and Recoveries and for the Substitution of more simple Modes of Assurance,' appeared personally —, the wife of —, and produced a paper writing marked (—), bearing date the — day of —, and identified by our signatures. And we do hereby certify that the said — was, at the time of her producing the same paper writing, of full age and competent understanding, and that she was examined by us apart from her husband touching her knowledge of the contents of the said paper writing, and of the nature and effect of the [application or other act according to the effect of the paper writing] therein mentioned, and that we ascertained that she was acting with respect thereto freely and voluntarily."

The paper writing mentioned in the certificate identified by the signatures of the commissioners making the examination; and the certificate and a declaration or affidavit verifying the certificate, and the signatures thereto of the parties by whom the same shall purport to be signed, shall be lodged in the office.

Such declaration or affidavit may be to the following effect:—

"I (A. B.), of —, in the county of — [make oath and say],—

"That I know —, the wife of —, in the certificate hereunto annexed mentioned, and that the said certificate was signed by —, of —, and —, of —, the commissioners in the said certificate mentioned at —, in the county of —, in my presence.

"That to the best of my knowledge or belief, neither of the said commissioners is in any manner interested in the transaction giving occasion for such examination, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned.

"(Sworn or declared, &c)." 27.

Persons under Disabilities.

286. The 116th section enables "the guardian or committee of the estate respectively" of any minor or lunatic, or where there is no such guardian or committee, a guardian appointed for the purpose by the Court of Chancery, to concur or act in any proceeding under the act, and also enables the court, where necessary, to appoint a next friend of a married woman.

Swearing or making Affidavits or Statutory Declarations.

287. "Affidavits, to be used in the office, may be sworn before the assistant registrar, or a commissioner appointed to take affidavits in the Court of Chancery. The registrar may, if he think fit, require evidence to be given *vivâ voce* before him, and that any affidavit shall be sworn before himself. All affidavits shall be filed in the office, and office copies thereof be taken for use." (33).

288. A stamp of 1s. 6d. must be affixed to every affidavit or statutory declaration sworn or made in the office, and 1s. to every exhibit marked in the office. A stamp of 2s. 6d. must also be affixed on filing any affidavit or statutory declaration, and a stamp of 4d. per folio on any office copy thereof.

289. Statutory declarations are now generally used in the office instead of affidavits, except in the case of the oath required under the 22nd section of the act on the completion of registration.

Security for Costs and Expenses.

290. "The applicant shall, when required by the registrar, secure the payment of any costs or expenses, by the undertaking in writing of himself or his solicitor, or by deposit of money, as the registrar may from time to time direct." (12).

291. The 132nd section provides, that "where registration is made on the application of parties who cannot make a valid charge on the fee-simple, the Court of Chancery may declare that the costs and expenses of registration may be raised by a mortgage of the fee-simple, and the same shall be charged accordingly."

Services of Notices.

292. [See Nos. 42, 43.] "All notices required by the act or these Orders to be served shall be under the seal of the office." (39).

293. To every notice under the seal of the office a stamp of 1s. must be affixed.

294. "Services of notices through the General Post-office shall be deemed good service if the registrar shall so direct." (40).

295. "Substituted service on the solicitor, attorney, or agent of any party shall be deemed good service on such party, if the registrar shall so direct." (42).

Extension of Time.

296. All applications to extend the time limited by General Orders for any purpose shall be made to the registrar, who may extend such time as he may think fit. (41).

Printing.

297. "All documents required to be printed shall, for the sake of uniformity, be printed on paper or parchment of such size and description as shall be approved of by the registrar." (34). [See No. 136.]

Crown Lands, &c.

298. By the 114th section, the public officer or body having the management of the Crown or public lands shall represent the owner of such lands for all the purposes of the act, and special provision is made with respect to lands belonging to the Duchy of Cornwall.

Abatement of Proceedings.

299. "In case of death or transmission or change of interest, pending any registration, the proceedings therein shall not abate, but shall be available to the heir, devisee, grantee, or assignee, if he shall think proper to adopt the same." 28.

Incorporeal Hereditaments.

300. "All these rules, so far as they are capable of being so applied, shall apply to the registration of the titles to incorporeal hereditaments." (51).

Addressees.

301. The 124th section enacts, that "a place of address shall be given to the registrar for every person in England whose name is entered on the register of title as proprietor of land, of a charge, or as cautioner, or as entitled to receive any notice, or in any other character."

(To be continued).

JURIDICAL SOCIETY.—A meeting of the Society was held on the 27th June, when a paper was read by Mr. Droop, intitled "Arrangements between a Debtor and his Creditors, and the Conditions under which the Decision of a Majority of Creditors may properly be made binding on all." The Right Hon. Lord Westbury presided, and addressed the meeting, giving a very luminous account of the Law of Bankruptcy, and its history, but more particularly of the measure of 1861, and the difficulties which its authors had to contend against. Mr. W. T. S. Daniel, Q. C., and Mr. F. S. Reilly continued the discussion, and the proceedings terminated in votes of thanks to the Reader and Chairman.

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THE JURIST.

LONDON, JULY 14, 1866.

A CONVEYANCE or devise of an estate in fee-simple, or an assignment or bequest of an absolute interest in personality, with a condition that the devisee or legatee shall not alienate or charge the property, passes the absolute interest free from the condition—which it treated as void, because it is repugnant to the interest devised. In commenting upon Littleton's 360th section, Coke says:—"And the like law is of a devise in fee, upon condition that the devisee shall not alien; the condition is void, and so it is of a grant, release, confirmation, or any other conveyance whereby a fee-simple doth pass. For it is absurd and repugnant to reason that he that hath no possibility to have the land revert to him should restrain his feoffee in fee-simple of all his power to alien. And so it is if a man is possessed of a lease for years, or of a house, or any other chattel, real or personal, and give or sell his whole interest or property therein, upon condition that the devisee or vendor shall not alien the same, the same [condition] is void, because his whole interest and property is out of him, so as he hath no possibility of a reverter; and it is against trade and traffic, and bargaining and contracting between man and man." (Co. Litt. 223. a.) Here are two very different reasons suggested for the rule—the repugnancy of the condition, and the impolicy of the restraint. The latter reason appears by the context to have been thrown in by the commentator without warrant, for he admits that the rule only extends to conditions annexed to the grant or sale itself in respect of the repugnancy, and not to any other collateral thing. And he puts the following case:—"If A. be seized of Blackacre in fee, and B. enfeofeth him of Whiteacre, upon condition that A. shall not alien Blackacre, the condition is good, for the condition is annexed to other land, and onsteth not the feoffee of his power to alien the land whereof the feoffment is made, and is no repugnancy to the state passed by the feoffment; and so it is of gifts or sale of chattels real or personal." And in another place, he says, "If the feoffee be bound in a bond that the feoffee or his heirs shall not alien, this is good, for he may, notwithstanding, alien if he will forfeit his bond that he himself hath made."

In *Brandon v. Robinson* (18 Ves. 429), Lord Eldon rested the rule upon repugnancy. It was a bill filed by the assignee of a bankrupt, claiming to be entitled for the life of the bankrupt to the income of a share of residue, which residue had been bequeathed to trustees, upon trust, as to the bankrupt's share, to pay the income from time to time to him upon his own receipt, to the intent that the same should not be assignable by way of anticipation, and after his death to pay the principal, in effect, to his next of kin. Lord Eldon, in overruling a general demurrer to the bill, said, "There is no doubt that property may be given to a man until he shall become bankrupt. It is equally clear, generally speaking, that if property is given to

a man for his life, the donor cannot take away the incidents to a life estate; and, as I have observed, a disposition to a man until he shall become bankrupt, and after his bankruptcy over, is quite different from an attempt to give to him for his life, with a proviso that he shall not sell or alien it. *If that condition is so expressed as to amount to a limitation, reducing the interest short of a life interest, neither the man nor his assignee can have it beyond the period limited.* In the case of *Foley v. Burnell* (1 Bro. C. C. 274), this question afforded much argument. A great variety of clauses and means was adopted by Lord Foley, with the view of depriving the creditors of his sons of any resort to their property; but it was argued here, and, as I thought, admitted, that if the property was given to the sons, it must remain subject to the incidents of property, and it could not be preserved from the creditors unless given to some one else."

Nothing can be clearer or more reasonable than the doctrine as laid down by Lord Eldon in *Brandon v. Robinson*. A life interest may be given to a man, to cease on alienation or bankruptcy. If, in lieu of a proviso for cesser or gift over, there is a declaration, that after attempted alienation or bankruptcy, the donee, and not his assignee, shall continue to enjoy the income, the law will neither give full effect to that declaration, nor treat it as a proviso for cesser. But that is a very different thing from a condition or limitation, subjecting the estate or interest to forfeiture on giving it over upon alienation; and it is difficult to see any reason in the old doctrine, that such a condition is void, or in the distinction taken by Coke between a condition against alienation of the estate to be affected by the condition, and a condition against alienation of a different estate. Of course, such a condition or limitation would be void, if not expressly limited to take effect within the period allowed by the rule against perpetuities. If a gift over on alienation is bad, by reason of its repugnancy to the ownership, a gift over, in case of alienation otherwise than in a prescribed manner, must also be bad, inasmuch as the ownership implies an unrestricted power of alienation; yet it is held, that a condition not to alien to a specified person or his heirs is good (Co. Litt. 223. a.); and it has even been held, that a condition not to alien to any one, except a specified person or his children, is good (*Doe v. Pearson*, 6 East, 173); though this is contrary to other authorities. (*Muscamp v. Bluet*, Bridgm. 137; *Attwater v. Attwater*, 18 Beav. 330). On the other hand, a condition or limitation, intended to interfere with the ordinary devolution of property on death, is equally open to the objection of repugnancy; yet in *Doe d. Stevenson v. Glover* (1 C. B. 448) it was held, that a devise in fee might be made subject to a gift over in case the devisee should die without having alienated the estate. That decision was overruled in *Holmes v. Godson* (2 Jur., N. S., part 1, p. 383), in which the Court followed *Ross v. Ross* (1 J. & W. 155); *Cuthbert v. Purner* (Jac. 415); *Re Yalden* (1 De G., Mac., & G. 53), and other cases, where the validity of a similar gift over of personalty was denied (see *Ex parte Palmer*, 5 De G. & S. 350); and the Court said that there was no distinc-

tion in respect of such limitations between realty and personality.

Another authority in favour of the limitation is *Large's case* (2 Leon. 82), where A. devised lands to his wife until William, his son, should come to the age of twenty-two years, and then the remainder of part of the lands to his two sons, A. and John, and the remainder of other part of his said lands to two others of his said sons; upon condition, that if any of his said sons before William should come to the age of twenty-two years, should go about to make any sale of any part, &c., he should for ever lose the lands, and the same should remain over. It was held that the gift over was good. But if the exercise of the rights of ownership within a short term of years can be made a ground of forfeiture, there is no reason why a forfeiture or alienation may not be imposed to take effect at any time within the period allowed by the rule against perpetuities. And it may be that both Littleton and Coke were contemplating only conditions against alienation unlimited as to time, and that such conditions were held void as tending to a perpetuity, in the early times, before the introduction of executory uses and devises had occasioned the development of a more definite and complete rule against perpetuities. However this may be, there is in a gift over in case of alienation within a limited time, no attempt to get rid of the incidents of property, and no such inconsistency of intention, as there is where a testator says and intends that the property shall remain in the devisee after he has attempted to alienate it. (*Athwater v. Athwater*, 18 Beav. 330). The intention is, that the devisee shall be entitled to the fee, unless and until a certain event happens; and if that event happens, it shall go over. If the event is anything but alienation or non-alienation, the gift over is valid; and it is absurd to say that, because the condition relates to alienation, it shall be void. Such a limitation is not against the policy of the law, for the effect of it may lawfully be attained by a mere change of language. A devise to A. for life, and after his death to such person or persons as he shall appoint by deed or will, and, in default of appointment over, is good; and it would be difficult to maintain the invalidity of a devise to A. for life, and in case he should die without having executed any disposition of, or charge upon, his estate or interest under the will, to him and his heirs, or to his heirs, but if he should have executed any such disposition or charge, to B.

There is a marked distinction between real estate and personal chattels, with reference to conditions against alienation. The enjoyment of real estate is necessarily by occupancy or reception of the rents and profits; the corpus or estate always remains. But the enjoyment of money or other personal chattels may consist in the spending or dissipation of the corpus itself; and to give the ownership of a sum of money, and at the same time to say that it shall not be spent, involves a contradiction. But there is no inconsistency in making a gift, even of personalty, to take effect at a future time, and declaring that it shall go over in case of an attempt to alienate it before the appointed time for payment; and in *Churchill v. Marks*

(1 Coll. 441), Sir J. L. Knight Bruce held such a condition valid, and characterised the contrary opinion as antiquated. And in *Graham v. Lee* (23 Beav. 388), it seems to have been admitted that a legacy might be given to be paid to a legatee at the age of twenty-five, if he had not previously assigned or attempted to assign it; and the only contest was on the question whether such an attempt had been made. In a subsequent case of *Re Payne* (25 Beav. 557), where a fund was given in trust for S. for life, and then to the children of S., to be vested at majority, and subject to a gift over of the share of any one who, having acquired a vested interest in a share, should assign or incur the same before the time of payment, the gift over was held to be valid. And in *Kiallmark v. Kiallmark* (26 L. J., Ch., 1) Sir R. T. Kindersley, V.C., went further, and, in administering the trusts of a settlement, whereby freehold and leasehold property was settled, upon trust, after the death of the tenant for life, to be sold for the benefit of the children, with a provision giving over the shares of sons in case of bankruptcy at any time before a sale, held that the gift over took effect upon bankruptcy after the death of the tenant for life, and before a sale.

After these cases the recent decision of the Master of the Rolls, in the case of *Powell v. Boggis* (35 L. J., Ch., 472), appears to be an anachronism. There the testator, by a will dated in 1840, had given his freehold and leasehold lands to his sister during her life, and after her death to be sold, and the proceeds to be divided among his nephews and nieces therein named. He then directed that if any of the legatees should sell or dispose of their legacies before the time of payment, his executors should be exonerated from the payment of such legacies. There was a general residuary gift. The Master of the Rolls held that the clause of forfeiture was ineffectual, and said that a life interest in realty or personalty might be made determinable on alienation, and property might be given subject to a precedent condition. "But I apprehend that a testator may not give property, and then say that the legatee is not to dispose of it; as that is a condition repugnant to the gift. . . . The simple question here is, whether the manner in which this forfeiture clause is used amounts to a condition which the legatee is to fulfil before getting the property, or is it a fetter imposed by the testator to prevent alienation? I think it is a mere fetter on alienation." The distinction between conditions precedent and conditions subsequent had been properly exploded in the modern cases. (*Dickson's Trust*, 1 Sim., N. S., 46; *Catt's Trust*, 2 Hem. & Mil. 52; *Churchill v. Marks*, 1 Coll. 441). The judgment in *Powell v. Boggis* assumes that there is a sound distinction between a trust to divide a fund on the death of A. among his children, except those who have previously done what would amount to an alienation of their shares, and a trust to divide a fund on the death of A. among his children, provided that no child shall be considered as entitled to participate who shall have previously done what would amount to an alienation of his share. If the operation of written instruments is to be governed by distinctions such as this, the sooner we abandon precedent, and revert to the standard of the judge's foot the better.

VESTING OF COPYHOLDS UNDER THE TRUSTEE ACT, 1850.

THE Trustee Act, 1850, contains an interpretation clause, which declares that the word "lands" in the act shall extend to and include hereditaments of every tenure or description; and that the words "convey" and "conveyance" shall extend to the surrenders and other acts which a tenant of copyhold lands can himself perform by way of assurance. It then, in several clauses, empowers the Court of Chancery in various cases to make orders vesting lands in such persons, in such manner, and for such estates as the Court shall direct; and it declares that the order shall have the same effect as if the person in whom the land was vested at the date of the order had duly executed a conveyance thereof. Thus, in the case of an appointment of a new trustee by the Court, the 34th section empowers the Court "to direct that any lands subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees, for such estate as the Court shall direct;" and it declares that "such order shall have the same effect as if the person or persons who before such order were the trustee or trustees (if any) had duly executed all proper conveyances and assignments of such lands for such estate." This must mean, in the case of copyholds of which the trustee was tenant, as if the trustee has surrendered them, although an essential part of the surrender is the acceptance of it by the lord or steward.

It is further provided by sect. 20, that in every case where the Court has authority under the act to make an order having the effect of a conveyance of land, the Court may, should it be deemed more convenient, make an order appointing a person to convey the land; and the conveyance made by such person shall have the same effect in conveying the land as a vesting order would have had.

If the act (like the old Trustee Act) had contained no further provisions expressly referring to copyholds, the effect of an order vesting copyholds in any person would have been to place that person in the position of a surrenderee of the copyholds, entitled to demand admission, and liable upon admission to pay the fees and fines ordinarily payable upon an admission, and the steward would have lost the fees, and the revenue the stamps payable upon a surrender. The interests of the revenue were, in fact, wholly overlooked in passing the act; and all vesting orders were free of stamp duty until the passing of the amending statute, 15 & 16 Vict. c. 55 (June 30, 1852), which provided (sect. 13), that every vesting order to be thereafter made, "which should have the effect of a conveyance or assignment of any land, or a transfer of any such stock as could only be transferred by stamped deed, should be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed by the person or persons seised or possessed of such lands, or entitled to such stock." This extends to copyholds; and an order vesting copyholds under the Trustee Act is liable to a stamp duty of 1*l.* 15*s.*, although if the transfer had been made by actual surrender the duty would have been only 1*l.*, or 5*s.*, according to the yearly value of the tenements. On the other hand, a vesting order is liable to one stamp only, although it may operate upon many tenements held of different manors.

By the 28th section of the principal act, it provided that whenever an order is made under the act vesting copyholds in any person, and is made with the consent of the lord of the manor, "the lands shall, without any surrender or admittance thereof, vest accord-

ingly." And whenever a person is appointed under the act to convey copyholds, such person may "do all acts and execute all instruments for the purpose of completing the assurance of such lands," with the same effect as if the person on whose place such substitution is made, had done the act or executed the instrument, and the lord and all others shall, subject to the customs of the manor and the usual payments, be equally compellable to make admittance, &c.

When a person is appointed to convey copyholds the consent of the lord is not required, and the assurance is made by surrender, upon which the usual fees and stamp duty are payable. But there is no provision for the case of a vesting order made without the consent of the lord; and as the order, if made, must, under the general provisions of the act, have the same effect as a surrender, it follows that the steward would be prevented by such an order from claiming the fees payable upon an actual surrender.

Moreover, when, by reason of the death of a trustee intestate, or the disclaimer of a devise of the trust estate, the copyhold is vested in an heir who has not been admitted, the effect of a vesting order made without the consent of the lord would be to deprive the lord of the fine which he could exact if the heir came to surrender. For though the heir is tenant before admittance, and his surrender without taking admittance is effectual, the lord is not bound to accept his surrender until he has been admitted, or paid the fine for admittance. (*Brown's case*, 4 Rep. 22 b.) It seems, therefore, that the Court, having regard to the interest of the steward and lord, ought in all cases where, independent of the act, a surrender, or an admittance and surrender would be necessary, either to require the consent of the lord, or to adopt the alternative course of appointing a person to surrender. Accordingly, in *Cooper v. Jones* (2 Jur., N. S., part 1, p. 59; 25 L. J., Ch., 240), where the copyholds had been sold by order of the Court in a suit by an equitable mortgagee against the infant heir of the mortgagor, which heir had not been admitted, Sir J. Stuart refused to make a vesting order without the lord's consent. In this he seems to have followed an established practice; for in the earlier case of *Re Flitcroft* (1 Jur., N. S., part 1, p. 418), the registrar required the lord's consent as a matter of course, but erroneously, under the circumstances, because it was the case of an appointment of new trustees of a settlement of lands including copyholds, in lieu of trustees named in the deed who had never accepted the trust; so that the lord had nothing to do with the matter, and the order was ultimately made to "vest in the new trustees all the estate which would have vested on the originally named trustees if they had accepted the trust." This case, therefore, is not in conflict with *Cooper v. Jones*. And in *Re Howard* (3 W. R. 605), where the deceased trustee had been admitted, the lord's consent was held to be necessary. These authorities were not followed in the recent case of *Paterson v. Paterson* (12 Jur., N. S., part 1, p. 408; 35 L. J., Ch., 518), where a devisee of copyholds upon trust had been admitted, and died, having devised his real estate to his widow, and leaving his brother his customary heir, and the widow, by deed, disclaimed the copyholds. Upon petition by the cestuis que trust, under the Trustee Act, the Court made an order appointing a new trustee, and (without the consent of the lord) directing that all the estate and interest in the copyholds devised by the deceased trustee, which would have vested in the devisee if she had accepted the devise, should vest in the new trustee;—following the form of orders made by Sir W. P. Wood, V. C., in *Re Hunt* (Set. Dec. 799) and in *Re Flitcroft* (1 Jur., N. S., part 1, p. 418), but under different circum-

stances. The lords of the manor had refused to consent to an order in that form, and were not served with the petition. After the order the new trustee applied to the lords to be admitted, but they refused to admit him without payment of a double fine. The trustee obtained a rule nisi for a mandamus to compel the lords to admit him, upon which the lords presented a petition praying that the order might be discharged as irregular and prejudicial to the remedy for the double fine. The Master of the Rolls, considering that the order was regular and properly made without the lords' consent, dismissed the petition, with costs, but he desired that the court of law should understand that the vesting order was not intended to affect the question as to the lords' fine. Perhaps the Court had jurisdiction to make the order, but, for the reasons we have mentioned, it is submitted that it is a jurisdiction which ought not to be exercised. The form of the order appears to have been wrong in limiting its operation to such estate as would have vested in the devisee, if she had accepted the devise—a proper limitation where the trusts are created by the same will (as in *Hurst's case*), but wrong in the case before the Master of the Rolls, where the testator was himself only a trustee. The order should have been simply for the vesting "of all the estate and interest in the said copyhold hereditaments devised by the will of the said P. Paterson the elder [the author of the trust], which was vested in the said P. Paterson the younger [the trustee] at the time of his death." The effect of the order, as it was framed, depended upon the construction of the deceased trustee's will; and if the general devise in that will had not been sufficient to pass trust estates, the order would have been inoperative. Its effect was to divest the estate out of the trustee's heir, who took by reason of the devisee's disclaimer; but it should have been so expressed as to be capable of operating, if there had been no devise to be disclaimed.

OFFICE OF LAND REGISTRY.—GENERAL ORDERS, DIRECTIONS, AND FORMS.

(Concluded from p. 284).

Inspection of Register.

302. The 15th section provides, that "the owners of the estates and interests, or of the mortgages and incumbrances recorded" in the register, "or their respective solicitors or agents," may inspect the register; and the 137th section, that "any person registered as proprietor of any estate or interest in any land or charge, and any person authorised by any such proprietor," may inspect and make copies of and extracts from any register or document in the custody of the registrar relating to such land or charge. No other person may make any such inspection or copies, unless authorised to do so by an order of the Court of Chancery.

303. Every application to inspect the register, or any document in the custody of the registrar, or for copies of or extracts from the same, shall be made in writing, signed by a registered owner or incumbrancer, or his solicitor or agent, and all such copies or extracts will be made by a clerk in the office.

304. The following fees are payable, viz.—

	s.	d.
For every application to inspect	5	0
For any extract or copy of any entry in the register, if not exceeding one folio	5	0
For any additional folio or part of a folio	2	6
The stamp must be affixed on the application, or office copy, or extract.		

The Middlesex and Yorkshire Registries.

305. The 104th section of the act enacts, that "the provisions of the several acts of Parliament now in force relating to the registries which have been established in the counties of Middlesex and York shall cease to be applicable to any land situate in the said counties respectively, so soon as the same land has been put upon the register under the provisions of this act, and whilst it remains thereon."

Vacations.

306. "The holidays and vacations of the office shall be the same as those of the Court of Chancery, subject to such orders as the registrar may from time to time make for the regulation and transaction of the business of the office, which shall be open daily to the public, except on Sundays, Good Friday, and Christmas Day, and days duly appointed to be kept as days of general fast or thanksgiving." (50).

Construction of Terms.

307. The 49th of the General Orders of 1862, and the 29th of the General Orders of 1864, provide, that wherever the word "solicitor" is used in these Rules [or Orders], the words "certificated conveyancer" shall be deemed to be included, and the word "affidavit" shall include "statutory declaration."

308. The 140th section of the act provides, that in the construction of this act (except where the context or other provisions require a different construction), the word "person" shall include her Majesty, her heirs and successors, and the Duke of Cornwall for the time being, and also a body politic or corporate; the word "possession" shall include receipt of the rents and profits; the word "land" shall include messuages, tenements, and hereditaments, corporeal or incorporeal; and the word "incumbrance" shall mean any legal or equitable mortgage in fee, or for any less estate, and also any money secured or charged on land by a trust, or by judgment, decree, or order of any superior court of law or equity, and also any legacy, portion, lien, or other charge whereby a gross sum of money is secured to be paid; and also any annual or periodical charge which, by the instrument creating the same, or by any other instrument, is made repurchasable on payment of a gross sum of money; and also any arrear remaining unpaid of any annual or periodical charge, for payment of which arrear a sale of any land charged therewith might be decreed by a court of equity.

Dated the 10th May, 1866.

GENERAL RULES UNDER THE MORTGAGE DEBENTURE ACT, 1865.—28 & 29 VICT. c. 78.

By virtue of the act of the 28 & 29 Vict. c. 78, I, Brent Spencer Follett, Esq., one of her Majesty's counsel, registrar of the office of Land Registry, with the sanction of the Right Hon. Robert Monsey, Baron Cranworth, Lord High Chancellor of Great Britain, do prescribe the following rules and regulations for the conduct of the business of the registration under the said act:—

1. Every company, before availing itself of the Mortgage Debenture Act, 1865, shall leave in the office of Land Registry a statement in writing under the seal of the company and the hands of two of its directors, shewing that it is incorporated and carrying on business under the Companies Act, 1862, or under some act of Parliament, and that it is entitled to advance money on the security of land, and that it complies with the provisions specified in the 3rd section of the Mortgage Debenture Act, 1865, and shall leave toge-

ther therewith proper evidence in support of such statement, and such evidence shall include printed copies of the memorandum and articles of association, and of any alterations or amendments therein, and of any special resolution or act of Parliament relating to such company.

2. The company shall lodge in the office of Land Registry a proper abstract or extract of the deeds or instruments creating the security on which it is intended to issue mortgage debentures, which abstract shall be verified as the registrar shall direct, at the expense of the company, before the company shall register any mortgage debenture founded on such security. The certificate referred to in the 9th section of the act, and in the schedule referred to in the 10th section of the act, shall also be verified in like manner and at the like expense.

3. The registrar may require the due execution of, or the signature to, any document deposited in the office, or produced to him, to be proved by statutory declaration or otherwise, as he shall think proper.

4. The application to the registrar, under the 16th section of the act, for the purpose of having any security freed and discharged from the charge of the mortgage debentures issued by the company, shall be under the seal of the company, duly attested as the registrar shall from time to time require, and shall state the date and particulars of the security so to be dealt with, and state whether by substitution of new securities, or by cancellation of an equivalent amount of mortgage debentures, and the date and particulars of the security, if any, intended to be substituted, or the dates and amounts of the mortgage debentures alleged to have been cancelled, and the date of the cancellation thereof.

5. Before the registration of a substituted security under the provisions of the 16th section of the act, the company shall furnish such abstract and deposit such certificate, and produce such evidence, and follow such course in all respects as the company is required to do in case of the registration of the original security.

6. Any person desiring to inspect or make a copy or extract from the register shall attend at the office of Land Registry for such purpose at such times, and such copy or extract shall be made in such manner as the registrar shall from time to time direct, and a fee of 2s. 6d. shall be paid for every such inspection, and 2d. a folio for every extract or copy from the register.

The indorsement on the mortgage debenture, required by the 33rd section of the act, may be made by stamp or seal, or in writing, as the registrar shall from time to time think proper.

7. When the company requires the discharge of any mortgage debenture to be entered on the register, the company shall make an application for that purpose signed by the secretary or a director of the company, stating the number and date and amount of the mortgage debenture, and when the payment thereof was made, and whether to the original grantee or to a transferee thereof.

8. In case any company shall cease to be entitled to issue mortgage debentures under the act, such company shall forthwith give notice thereof to the registrar under the seal of the company, and signed by two of the directors or the secretary of the company.

9. All documents left in the office of Land Registry shall, for the facility of filing, be on paper of such dimensions and description as the registrar shall from time to time require.

10. Every company shall provide from time to time, and as and when required by the registrar, at its own expense, such registers and other books, and such seals

and stamps as the registrar shall require from time to time for the carrying on of the business of such company.

11. Every document left at the office of Land Registry shall be printed at the expense of the company leaving the same, if the registrar shall so require; and if the registrar shall require the same to be printed, he may decline to receive the same until it shall be printed.

Dated this 14th day of November, 1865.

B. Spencer Follett.

Approved and sanctioned by me the
day and year above written.

CRANWORTH, C.

INCORPORATED LAW SOCIETY.

THE annual general meeting of the members of this society was held at their hall on Friday, June 29. Mr. William Williams, president, in the chair. The minutes of the last annual general and special meetings having been confirmed, the president stated the vacancies in the offices of president, vice-president, and in the council and auditors, and the following gentlemen were elected:—Mr. Alfred Bell, president; Mr. Bartle John Laurie Frere, vice-president; Mr. Edward Frederick Burton, Mr. John Moxon Clabon, Mr. James Leman, Mr. Park Nelson, Mr. Frederick Iltid Nicholl, Mr. Arthur Ryland, Mr. John Welchman Whately, Mr. William Williams, Mr. Robert Wilson, and Mr. John Young, were re-elected members of the council. Mr. John Hollams was elected a member of the council in lieu of Mr. John Coverdale, resigned. Mr. James Charles Palmer, Mr. Nathaniel Tertius Lawrence, and Mr. William James Farrer were re-elected auditors of the accounts of the society. The annual report of the council was approved, and ordered to be entered on the minutes. The auditors' report of the accounts of the society was approved and signed by the president.

The chairman announced to the meeting, that since the issue of the proposed annual report, Mr. James Scott, of Lincoln's-inn-fields, a member of the society, had expressed his intention to present to the society a sum of 1000*l.*, guaranteed 4½ per cent. stock in the London, Brighton, and South Coast Railway Company, for the purpose of founding a prize as an encouragement to students in passing the examination previous to admission.

The chairman also stated that the Honourable Society of New Inn had passed a resolution to establish an annual prize of the value of ten guineas in books to be awarded by the council at the final examination.

The thanks of the meeting were passed to James Scott, Esq., and to the Honourable Society of New Inn.

The thanks of the meeting having been presented to the chairman for his conduct in the chair, the proceedings terminated.

CHIEF BARON POLLOCK.

THE judges are probably the best known of all our public men. A great politician addresses the House of Commons a certain number of times in the course of a session, but to the public at large he is but a name, representing particular political opinions. Even when he addresses a public meeting, or makes an after-dinner speech, he is more or less of an actor. A judge, on the other hand, transacts all his business in public. He is one of the shows, not only of London, but of

every country town, and is constantly brought into direct personal relations not only with every member of a large and most active profession, but with men in all ranks of life, and on every sort of subject. He is, moreover, perfectly independent of those with whom he has to deal. His position is as secure as law and public feeling can make it. If he is ill-tempered, lazy, tyrannical, or even merely disobliging, he can indulge his failings without any special risk. No man can with perfect impunity give so much offence, or do so many and such deadly injuries, as an ill-disposed judge, nor is any man so continually on his trial. It is pleasant to reflect that, under these circumstances, the fifteen judges are, with hardly an exception, exceedingly popular, not only with the profession to which they belong, but with the public at large, and we shall doubt whether any one ever took with him into retirement a larger share of hearty affectionate admiration than the kind old man who, after presiding over the Court of Exchequer for nearly a quarter of a century, retires into private life full of freshness and vigour, and surrounded as closely as ever man was by all that should accompany old age. No doubt the Chief Baron had his failings. He had been so consummate an advocate at the bar, that he never quite threw off his old habits. He belonged to that class of judges who distinctly take a side in the course of a case, and make no mystery to the jury of the opinion which they have formed. It may admit of a good deal of argument, whether this habit does or does not favour substantial justice. To hit the exact line between fairly directing and unduly pleading from the bench is very difficult. Certainly, the attempt to be scrupulously neutral often ends in puzzling the jury, and in suggesting doubts to them upon points which in reality are quite plain. Whether or no the Chief Baron always hit the golden mean, no one could possibly doubt of the goodness of the motives by which he was actuated. He may sometimes have been a little too much of an advocate, but he was always an advocate for what appeared to him the cause of justice, truth, and good morals, and of these he was no bad judge. There were two characteristics about his behaviour on the bench which no one could mistake—his extraordinary gifts, and the extreme kindness, and even tenderness, of his nature. When fairly roused in a case which put him on his mettle, he would speak with a vivacity, a choice of language, and a dignity and power of manner, which recalled the old leader of the Northern Circuit in its best days to those who had known him before he was a judge. His lighter gifts were singularly winning. He was full of humour. The solemn orations which he used to make on Lord Mayor's day—a distinct and separate oration for each new Lord Mayor—were as good as a play, and will long form a pleasant tradition in Westminster Hall. His knack of committing innocent forgeries, was another specimen of the general adroitness and dexterity of mind and body which distinguished all that he did. He once directed a letter to a barrister in a hand so exactly like that of the barrister himself (and a wretchedly bad hand it was), that his correspondent supposed that he must have left at his chambers an envelope addressed to himself.

His talents, however, were not the most characteristic point about him. We should doubt whether, after all his long career, he had an enemy in the world, or even a casual acquaintance who did not feel towards him as a friend. Every tone of his voice, every expression that he used, when the occasion required it, was full of good nature and warmth of heart, though without a trace of weakness. He belonged to a race and generation which is hardly being renewed, but the felicity of his career will always be exceptional. A

man who is distinguished from one end of life to the other—who, from being senior wrangler, develops rapidly into being the leader of the Northern Circuit, Attorney-General, and Chief Baron—is, as the phrase goes, “commoner in fiction than in real life.” Those who had the opportunity of seeing from day to day how very pleasant such a reality might be, learnt something from it which they are not likely to forget.—*Pall Mall Gazette*.

THE LORD CHANCELLOR.—Lord Chelmsford was sworn in on Monday as Lord Chancellor, in the presence of the Master of the Rolls, the Lords Justices Knight Bruce and Turner, and Vice-Chancellors Kindersley and Page Wood. His Lordship, on taking his seat in the Court of Chancery, stated that he should sit in court during the rest of the term, except when engaged at the House of Lords or in the Privy Council. Wednesdays and Saturdays would, however, be the only days on which he could hear appeals. Such was the arrangement of his predecessor, and perhaps it would not be convenient to disturb it. After disposing of a few short cases his Lordship rose.

GRAY'S INN, July 4.—At an adjourned pension holden this day, Frederick Prideaux, Esq., barrister-at-law, was appointed Reader of the Society on the law of real property, &c.

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The Jurist

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THE JURIST.

LONDON, JULY 21, 1866.

A CASE has been recently decided in the Court of Common Pleas, which illustrates the rule of law applicable to cases where a person has been prevented from doing, by inevitable accident, that which he has undertaken to do. The material facts in *Appleby v. Meyers* (12 Jur., N. S., part 1, p. 500) appear to have been as follows:—The plaintiffs had entered into a contract to perform certain works on the defendant's premises, and had been engaged in carrying it out; but before the completion an accidental fire broke out on the defendant's premises, which entirely destroyed what the plaintiffs had erected thereon. The premises were occupied by the defendant, and entirely under his control, the plaintiffs having access thereto only for the purpose of performing their contract. The question was, whether the plaintiffs were entitled to recover the whole, or any portion, of the contract price. The Court took time to consider their judgment, which was delivered by Smith, J. It was laid down, that the whole of the contract price could not be recovered, for that was payable only on an event which had not happened—the completion of the works, but that the value of the work done could be recovered. It was stated in the course of the judgment, that when a man contracts to do a thing, he is bound to do it, or make compensation, notwithstanding he is prevented by inevitable accident; and the defendant was held liable on an implied promise to provide and keep up the premises in a state fit for the plaintiffs to work thereon. The case of *Taylor v. Caldwell* (32 L. J., Q. B., 164) was mentioned and distinguished. In that case, there had been a contract, that the defendants should allow the plaintiffs to give four concerts on four different days at the Surrey Gardens and Music Hall; before any one of the concerts was given, the music hall was burnt down. The plaintiffs having brought an action to recover damages for the defendants not allowing them to have the use of the music hall, the judges of the Court of Queen's Bench held that it could not be maintained; and that by a fire which occurred through the default of neither party, both parties were excused from liability to perform the terms of the contract. Allusion was made in the judgment to the class of contracts in which a person binds himself to do something which requires to be performed by him in person, such as promises to marry, or to serve for a certain time; and it was stated that it had very early determined, that if the performance of a contract is personal, the executors are not liable. A passage from *Williams on Executors* was cited with approval, to the effect, that if an author undertakes to compose a work, and dies before completing it, his executors are discharged from this contract; for the undertaking is merely personal in its nature, and by the intervention of the contractor's death has become impossible to be performed. The above were instances where an implied condition exists

of the continuance of a man's life; but the judges of the Queen's Bench considered that there were others where the same implication was made as to the continued existence of a thing, and hence drew the conclusion, that the defendants were not liable to be sued for the failure to allow to the plaintiffs the use of the music hall on the agreed nights.

It will be useful to compare the decisions given in the two above-mentioned cases with what has been thought to be well ascertained law in the case of a lease. In *Woodfall's Landlord and Tenant*, 354, ed. 1863, it is said, that where a lessee covenants generally to pay rent, he is bound to pay it, though the house be burnt down; and in *The Brecknock Company v. Pritchard* (6 T. R. 750), it is laid down by one of the counsel, that the rule is, that when the law creates a duty, and the party is disabled to perform it without any default in him, and he has no remedy over, the law will excuse him; but when the party, by his own contract, creates a duty or charge upon himself, he is bound to make it good if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract. This doctrine is stated by Lord Kenyon, C. J., to be correct; but the former portion of it seems hardly consistent with the old rule of law, as to the liability of a person on whose premises a fire had occurred without any default on his part, for damage occasioned to another person by the spreading of the fire. In *Roll. Ab.*, B. 2, it is said, "If a fire light suddenly in my house, I knowing nothing of it, and burn my goods, and also the house of my neighbour, my neighbour shall have an action on the case against me;" in such a case the law imposed on a person a duty (*sic utere tuo ut alienum non lœdas*), which an accident disabled him from performing; but nevertheless he was held liable. The law is now altered by the 6 Ann. c. 31, and 14 Geo. 3, c. 7, s. 86. (See *Gale on Easements*, 239). The latter part of the doctrine, of which Lord Kenyon, C. J., approved, does not seem to agree with *Appleby v. Meyers* and *Taylor v. Caldwell*; for if it were correct, it would seem to be a necessary conclusion, that in the former case the plaintiffs would have been bound to do again the works destroyed by the fire, and complete the contract, before they could recover anything; and that in the latter case the defendants would be liable, as they were bound unconditionally to allow the plaintiffs the use of the music hall.

It is of frequent occurrence to insert in a lease a clause exempting the tenant from payment of rent if the house be burnt down. (See *Davidson's Precedents in Conveyancing*, vol. 5, pp. 181, 455, note, ed. 1861, and *Prideaux's Precedents in Conveyancing*, vol. 2, pp. 7, 39, ed. 1866.) It appears to have been at one time thought that equity would relieve the lessee if sued at law for the rent agreed to be paid for premises burnt down during the lessee's occupation. In *Baker v. Holtzoffell* (4 Taunt. 45) the plaintiff had obtained a verdict for rent claimed for premises which had been consumed by fire. The action was for use and occupation, and it was contended, on motion to set aside the verdict, that since the buildings were not

capable of being occupied, the plaintiff must fail. The Court refused to grant a rule, on the ground that the land was still in existence on which the defendant might rebuild, and that the landlord, if he entered for that purpose, would be a trespasser, and that there was no offer on the defendant's part to deliver up possession. In *Holtzopffel v. Baker* (18 Ves. 115) it was held by Lord Eldon, L. C., that the lessee had no remedy in equity.

Again: in *The Brecknock Company v. Pritchard* the liability of a person who has contracted to keep a bridge in repair came into question. The declaration alleged that the defendants undertook to keep in complete repair a bridge for seven years, but had failed to perform their contract. The plea alleged that the bridge had been washed away by the act of God, that is, by a great unusual and extraordinary flood of water, such as the bridge could not be reasonably expected to resist. This was held bad. But the principle of this case falls far short of the extent which it is necessary to go in order to support *Appleby v. Myers*. It seems reasonable enough to hold, that the defendant's contract was, in effect, one insuring that the bridge should be in repair during the whole of the time specified; but *Appleby v. Myers* presented many difficulties, and, as the Court said, was a case as to which no decision directly in point could be cited.

LEGAL AND CONSTITUTIONAL HISTORY.— THE PETITION OF RIGHT, AND MARTIAL LAW.

It has been remarked by some great legal writer, that no one can be a good lawyer who has not a competent knowledge of the *history* of law. This has been just illustrated in a remarkable manner by an article in the *Saturday Review*, on the subject of Martial Law, which bears internal evidence of having been written by a member of the Profession, but is pervaded by a fundamental error, obviously arising from an unacquaintance with the *legal history* of the subject.

The article is upon Mr. Finlason's book on Martial Law, which maintains the legality of martial law in times of rebellion—a legality which has been distinctly affirmed by the Secretary of State, on the advice of the law officers of the Crown. The object of the article is to displace this view, by shewing that the Petition of Right abolished martial law, whereas, as Mr. Finlason maintains, it applies only in time of *peace*, and *within the realm*. The latter point it does not appear is disputed, nor *could* it be, since the Petition is expressly and in terms limited to the realm. As, however, it is not *expressly* and in terms limited to time of peace, the *Saturday Review* maintains that it is *not* so limited. Now to begin with, there is surely a blunder in referring to the *Petition* of Right rather than to the *Bill* of Right, by which it was finally enacted into law, and which is *expressly* limited to time of peace. This surely is the legislative construction on the Petition of Right. But, in the next place, there is an obvious blunder in supposing that the Pe-

tition of Right has anything at all to do with martial law, properly so called. For it is pointed expressly at certain *commissions* of martial law, which it recites had been issued; and it prayed that "no commissions of *like nature* should be issued," to be executed *as afore-said*; so that on the face of it it is limited to *commissions* of martial law of a particular character. The very term "commissions" points to something quite different from martial law in time of war or rebellion, which is, by force of the existence of the war, or the *declaration* of martial law, and not by commission. And there is an allusion to certain *commissions* which had been *lately* issued, for it recites, "that of late divers commissions under your Majesty's Great Seal, have issued forth, by which certain persons have been appointed Commissioners, with power to proceed within the land, according to the justice of martial law, against such dissolute persons as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanour whatsoever; and by such summary course and order as is agreeable to martial law, and as is used by armies in time of war, to proceed to the trial and condemnation of such offenders, and cause them to be executed and put to death according to the law martial; when if by the laws of the land they had deserved death, they *might* and ought by those laws to have been even judged and executed . . . which commissions and all others of like nature are wholly contrary to the laws of the realm." Now this, it is manifest, is not directed against martial law in time of war (which it rather recognises and affirms), but to its assumption and exercise, by means of commissions over ordinary offenders, in times when they could have been proceeded against by the ordinary laws of the land. What was this, but the declaration of the common law, by which, as Lord Coke had already laid it down, it is murder to execute a man by martial law in *time of peace*? The Petition itself says so, in effect, for it asserts that the commissions it denounces were wholly contrary to law; whereas martial law in time of war, it distinctly recognises. And Hale, writing after the Petition of Right, mentions martial law in time of war as a suspension of the common law. It would have been impossible to fall into such an error if the writer had referred to legal history to see *what the commissions were* which are denounced in the Petition of Right. Writers so well known as Hume and Hallam describe them, and they are alluded to by Mr. Finlason in his book. Thus, Mr. Hallam says, "No other measure of Elizabeth's reign can be compared, in point of violence and illegality, to a *commission* whereby, upon no other allegation than that there has been of late 'sundry unlawful assemblies in riotous sort,' for the suppression of which it was found necessary to have some notable rebellious persons to be speedily put to death, according to the system of martial law"—the Commissioner was authorised "to cause to be executed upon the gallows notorious offenders." And Mr. Hallam mentions similar commissions issued by Charles I. (1 Const. Hist. 389). Now, this exactly answers to the "commissions" described in the Petition of Right, and was "wholly contrary to law." For it was a commission to execute ordinary offenders in ordinary times

by martial law; whereas it is manifest that martial law can only be lawful in time of war, and in the actual presence of war, in a district in a state of war, as Mr. Finlason maintains in his book, only justifying the proclamation of martial law in a district in a state of armed rebellion, and a rebellion not only amounting to war against the Crown, but a rebellion too formidable to be repressed, *except* by martial law; all which the writer in the *Saturday Review* ignores, and represents him as maintaining, that on account of war at a *distance*, martial law might be proclaimed at home; whereas he is very particular in pointing out, that there must be a dangerous and formidable rebellion in the district declared under martial law. This is not very creditable to the candour of the writer; any more than his representing Mr. Finlason as "misquoting" the Petition of Right (which he sets out accurately at p. 11), because elsewhere he states its *effect* to be, according to his *construction* of it, to be limited to time of peace. This is wretched work, however, to expose such misrepresentations; what is more important is, to point out the importance of legal history. And to recur to our history—Hume and Hallam mention commissions of martial law issued by Charles I in *time of peace*, exactly in the same terms as those of Elizabeth, already alluded to; and he distinctly mentions these as the commissions alluded to in the Petition of Right. (1 Const. Hist. 389). Then, he states, "A commission was issued 1625, empowering the Commissioner to proceed against soldiers or other *dissolute persons*, who should *commit any robberies*, &c., by such summary course as is agreeable to martial law." (1 Const. Hist. of Eng. 389). And he mentions another similar commission in the next year. Now, the Petition of Right was in 1628, two years afterwards; and it recites, "that commissions have of *late* been issued by your Majesty." What can be more clear than that *these* were the "commissions alluded to?" And what were they "but commissions of martial law in time of peace" for the trial of ordinary offenders? It is *such* commissions of martial law (not martial law in time of war or rebellion) which the Petition of Right declares illegal. And accordingly, the Bill of Right, by which the Petition of Right was finally and formally enacted into law, puts this construction upon it, and declares, that no man can be put to death in time of *peace* within the realm, except by the laws of the land—a recital repeated in every Mutiny Act since the revolution. And the Legislature has repeatedly in our own times affirmed the legality of martial law in time of rebellion. Thus it was in the 43 Geo. 3, and thus it was in the act of Will. 4, to which Mr. Finlason refers; and to none of which, by the bye, does the *Saturday Review* refer: another instance of *candour* in a public writer. The writer must surely have known of them, as he must have known of the passages above cited from Mr. Hallam, and of the passage in which that great writer distinctly declares the legality of martial law in time of rebellion; that is, of martial law as described in the Petition of Right, involving the *summary trial and execution* of prisoners, according to the justice of martial law. "There may, indeed, be times of pressing danger, when the conservation of all de-

mands the sacrifice of the legal rights of a few. There may be circumstances that not only justify, but compel, the temporary abandonment of constitutional forms. It has been usual for all Governments, during an actual rebellion, to proclaim martial law, or the *suspension of civil jurisdiction*." (1 Const. Hist. Eng. 240). Now, this cannot refer merely to the action of the military in aid of the civil power in the suppression of actual riot or outrage, as on the occasion of the Lord George Gordon riots. For that, as Lord Mansfield declared, is *not* martial law at all, nor is it "the *suspension of court jurisdiction*," as Mr. Hallam describes martial law to be; for it is *in aid* of the civil jurisdiction, and is by force of the common law itself, as Lord Chief Justice Tindal declared, in the case of the Bristol riots; whence it is that prisoners must be given to the civil power, and be tried and disposed of by the civil courts. Whereas, as the Petition of Right recognises, under martial law, properly so called, prisoners may be tried and "*executed*" by "the summary justice of martial law." The writer in the *Saturday Review* must have been well aware of all these authorities, for they are cited in the Preface to Mr. Finlason's book, as well as in the work itself; and knowing all this, it was scarcely candid or fair, even to his readers, to represent that the Petition of Right had abolished martial law in time of rebellion, even within the *realm*, to which alone it refers.

In the Ceylon case the late Sir R. Peel was at first disposed to adopt that view; but when referred to the Statute Book, which had clearly put the contrary construction upon it, expressly *reserving* to the Crown the power of declaring martial law in time of rebellion, he frankly acknowledged his error. The *Saturday Review* had fallen into the same error in its earlier articles on the subject, but had not the same candour. On that occasion Mr. Stuart Wortley, the late Recorder, put the question on its true basis, when he said to the Judge Advocate-General, "In short, the proclamation of martial law is the declaration of a state of war." To which the answer of the Judge Advocate-General was, "Precisely so." And that view was adopted and adhered to by the Crown then, and has been just formally adopted and declared by the Crown in the Jamaica case. For the Secretary of State, in his despatch, confirming the Commissioners' Report, declared, upon the advice of the law officers of the Crown, that no indemnity was required for acts done under orders during martial law—the very proposition maintained by Mr. Finlason. To this, again, the *Saturday Review* makes no allusion, and leaves it to be supposed that the whole subject of martial law is obsolete, and that it has never been exhumed since the time of the Commonwealth. Agreeing with the *Saturday Review* that the subject is one of great importance, we wish that it had been discussed in its pages with more candour, and more justice to its readers.

SIR FREDERIC POLLOCK.

It is hardly probable that the retirement of Sir Frederic Pollock should pass without notice in a legal journal. The length to which his career has been protracted would of itself be most remarkable; and he belonged to an order of men of whom the last are now leaving the bench. Whatever may be the cause, men of the same high calibre of intellect and mental

character do not now appear in the ranks of the common-law branch of the profession; as the very mention of such names as Lyndhurst, Brougham, Scarlett, Coleridge, Wilde, Follett, and Pollock will remind us. When Dr. Lushington, likewise, shall have resigned, the last of this illustrious race will have passed away from the bench; and if they are to have any successor in the future, it will be, so far as we can see, in the person of the son of one of the most distinguished of them.

Mr. Pollock's career at the bar commenced in association with such men as Scarlett and Brougham, and not long since the writer heard him mention that Brougham was his junior in the profession, and had appeared as junior to him. He also mentioned how proud he was when he first gained a verdict against Scarlett. This carries us back more than half a century ago; in fact, one might almost say "Tis sixty years since." There were giants in those days—giants in intellect; and Mr. Pollock was among them. He had an intellect of the highest order; he had won the highest honours at the university; he came to the bar, as so many then did, with an intellect at once keen and highly cultivated; and it was soon exercised severely in constant contest with some of the most powerful advocates that have ever adorned the bar. He soon rose to the first-rate practice, and some years ago his late clerk, Mr. Coleman, shewed the writer and others of the bar, the Liverpool cause list for some year nearly half a century ago, in which every special jury cause was marked as one in which Mr. Pollock was retained on one side or the other. In the Law Reports of the first quarter of the present century the name of Mr. Pollock also constantly appears opposed to those of Campbell—the late Lord Campbell—or Parke—the present Lord Wensleydale. More than a quarter of a century has elapsed since he was Attorney-General, with Sir William Follett as Solicitor-General. Probably no minister ever had two such powerful law officers as Sir R. Peel, and very proud he was of them both, paying them on all occasions the most marked respect, and relying on them with implicit confidence. Either from his intellect not being so facile as his colleague's (though it was more powerful), or from his eloquence being more forensic than parliamentary in its character, Sir Frederic Pollock did not make such a brilliant figure in debate as his coadjutor, and the honours of parliamentary oratory were won by Sir William Follett. There was, however, a manly dignity about Sir Frederic Pollock which, whenever he addressed the House, always secured its respectful attention; and he left his name attached to more than one measure of useful and sensible legislation. His forensic eloquence was singularly impressive, from its union of dignity with earnestness. His style was marked by more dignity of delivery than any other man at the bar. He gained great verdicts; and one case occurs to the recollection of the writer—an action for malicious prosecution—which was tried before Lord Abinger, and in which Pollock was for the plaintiff, and Follett for the defendant; and in which, after a splendid forensic struggle, the powerful reply of Sir Frederic Pollock gained a verdict for the enormous sum of 3000*l*. The style of Sir Frederic was marked by such dignity, that it was, perhaps, more judicial than forensic; and there probably never was a man whose style and manner were more fitted for the chief seat on a judicial bench. There was a commanding power in his intellect, and an imposing dignity in his voice, and manner, and utterance, which, joined to his vast experience, gave him immense influence upon the bench, either with his brethren or the bar, and, it may be added, gave him prodigious influence with a jury. It has been remarked that no

judge ever had *such* influence with a jury; and his summing up, in cases in which he took an interest, and desired to influence the verdict, were certainly consummate specimens of judicial skill. As illustrations of this, may be mentioned his summing up in the case of *Hatch v. Lewis*, and in the case of *The Alexandra*. Both these cases were towards the close of his career, and were marked by as much *power* as a judge could possibly display. He was Chief Baron for more than twenty years, and he retained his *mental* vigour to the last, although at the time of his retirement his age was not less than eighty-two. He was rather proud of this, as well he might be, and was wont to say that he was the oldest judge who had ever sat on the *English* bench. "Lord Mansfield (he would add) retired at the age of eighty." There was not the slightest decay or decline in his mental faculties, although, no doubt, there was *physical* weakness which rendered his retirement, though not necessary, wise and judicious. It is more pleasant to retire while one's faculties are yet unaffected than to wait until they shew symptoms of decay. And, certainly, no man might more *readily* retire, or find greater *pleasure* in his retirement. Sir Frederic Pollock, like Littledale and Coleridge, had always found his recreation in the exercise of those fine faculties of mind which had been so richly cultivated and so richly exercised; and to the last he retained his keen relish for intellectual enjoyment. His recreations, indeed, were of a rather severe order, consisting chiefly of exercises in mathematics. He added to these severe pursuits, however, others of a lighter order: he was much attached to art; and to one art in particular, photography, he was greatly addicted. The photographers, proud of their illustrious associate, made him president of the Photographic Society, and, we believe, Sir Frederic still holds the office. To a mind like his, leisure can never want employment, and well-earned retirement must be unalloyed enjoyment. In his case, also, it has peculiar claims, owing to the large scope of his family circle, and the unusual attractions of his domestic life. If there was one distinction of his great age of which Sir Frederic Pollock was more proud than of his undimmed faculties, it was his patriarchal happiness as the head of a family. He has been heard to say that he had sixty-five direct descendants. "Have you any great grandchildren," asked a friend. "Any?" exclaimed the old Chief Baron, "Why, I have five already, and hope to have more." It is not every one to whom it is given to see his children's children; but to live to see the *fourth* generation is a happiness which falls to few. And of his gratitude for this great happiness Sir Frederic Pollock made no secret. If (as in Scripture seems to be implied), to see one's descendants to the third and fourth generation is the greatest test of earthly blessedness, then Sir Frederic Pollock's life must have been blessed, indeed. To such a man, with the memory of such a life, and the recollections of such a career, with the possession of such mental faculties, and the society of such a family—to such a man, retirement surely can bring nothing but repose and enjoyment; and long may he live to enjoy it.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, July 12.

LAW OF CAPITAL PUNISHMENT AMENDMENT BILL.

The report of amendments on this bill was brought up and agreed to.

ADMINISTRATION OF JUSTICE CHANCERY AMENDMENT BILL.

Lord Cranworth moved the second reading of this bill, which provided that on the next vacancy in the office of Lord

Justice the Master of the Rolls should become a Lord Justice, another Vice-Chancellor being appointed. The Master of the Rolls was one of the highest functionaries in the Court of Chancery, and yet an appeal now lay from his judgments to the Lords Justices, who were individually of lower rank. That seemed to him to be an anomaly which it was desirable to remove, while it would incidentally have the advantage of saving the country 1000*l.* a year—the difference between the salaries of the Lords Justices and of the Master of the Rolls on the one hand, and of a Vice-Chancellor on the other.

The Lord Chancellor could not acquiesce in the bill, the effect of which would be to abolish the office of Master of the Rolls in all but the name. The only reason given for the measure was, that it was an anomaly that an appeal should be made from the Master of the Rolls to functionaries of inferior rank. But this must have been foreseen by the Legislature when the Court of the Lords Justices was created; and it was evidently a mere matter of sentiment, and one of quite insufficient importance to become the basis of legislation. If the change contemplated by the bill took place, there would be the greatest difficulty in providing for the employment of the present staff of the Master of the Rolls, because many of their offices would become mere sinecures. He understood that the present Master of the Rolls was opposed to the bill, and under these circumstances he trusted that the second reading would not be pressed.

Lord St. Leonards, in opposing the bill, observed, that the principle upon which it was founded seemed to be, that an appeal from the Master of the Rolls was an appeal from a superior to an inferior tribunal. But such was not the case, for such an appeal was intended to be an appeal to the Lord Chancellor and the two Lords Justices. The intention originally was, that the Lord Chancellor should preside more frequently in the court than had been the custom of late.

Lord Romilly stated, that when the noble and learned Lord who lately sat upon the woolsack consulted him with regard to the bill, his answer was, that he placed himself entirely in his hands, and would give his assent to it if he thought it desirable. Some time after the noble and learned Lord sent him a copy of the bill; and upon carefully considering it, he thought it would so seriously affect the ancient functions exercised by the Master of the Rolls, and cause so much complication, that he suggested to the noble and learned Lord whether it would not be better to withdraw the measure.

Lord Kingsdown understood the object of the bill was to curtail the number of appeals that came up to their Lordships' House; because it had been found, unfortunately, that since the appointment of the Lords Justices, the number of these appeals had not been seriously diminished.

Lord Cranworth said his view was, that the Master of the Rolls should exercise the duty of a Lord Justice as well as that of the Master of the Rolls. He had wished to put all appellate jurisdiction on an equal footing, and he had thought that a seat on the Bench of the Lords Justices was the proper place of the Master of the Rolls. As the noble and learned Lord on the woolsack, who, of course, represented the Government, objected to these views, he would not put their Lordships to the trouble of dividing, but would withdraw the bill.

Bill withdrawn accordingly.

STATUTE LAW REVISION BILL.

On the motion of Lord Cranworth, the order for the second reading of this bill was discharged.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL BILL.

At the suggestion of the Lord Chancellor,

Lord Cranworth consented that the order for the second reading of this bill, the object of which was to secure a more regular attendance at the sittings of the Judicial Council, should be discharged, there not being sufficient time to consider the bill during session.

The bill was then withdrawn.

Friday, July 13.

CARRIAGE AND DEPOSIT OF DANGEROUS GOODS BILL.

On the motion of the Earl of Belmore, this bill was read a second time.

LAW OF CAPITAL PUNISHMENT AMENDMENT BILL.

Lord Cranworth moved that this bill be read a third time.

After some observations from Lord Teynham in condemnation of it,

The motion was agreed to, and the bill passed.

Tuesday, July 17.

PUBLIC COMPANIES BILL.

The Earl of Nelson proposed the second reading of this bill, the object of which was to enable shareholders of public companies to vote by voting papers as well as personally and by proxies. The evil of the present system was, that as proxies were obliged to be filed at the offices of the company forty-eight hours before a meeting, and the directors thus acquired a perfect knowledge of their own strength and of that of their opponents, they were enabled to draw up their report and shape their course accordingly.

Lord Redesdale thought the appropriate remedy for the evil complained of would be to introduce a bill rendering it unnecessary to lodge proxies at the office of the company forty-eight hours before a meeting. At the same time he would not oppose the second reading of the bill.

The Duke of Buckingham said that the bill would not work in its present shape, and he therefore trusted that at this late period of the session the second reading would not be pressed.

The order of the day was then discharged.

THE DOGS BILL.

On the order of the day for going into committee on this bill,

Lord Cranworth opposed the bill as a piece of petty and unnecessary legislation. If a person kept a savage dog, without due precaution, he could, as the law now stood, be made liable for any damage the animal did. He would move that they should go into committee that day three months.

The Marquis of Clanricarde thought that the owner of a dog should, under all circumstances, be made liable for any injury which was done by the animal. The bill had obtained the unanimous assent of the House of Commons, and he trusted that their Lordships would not reject it.

The House then divided, when there were—

For going into committee	14
Against	37
Majority	—23

The bill was therefore rejected.

HOUSE OF COMMONS.—Monday, July 16.

THE HEALTH OF TOWNS BILL.

In reply to Mr. Henley,

Mr. Walpole said he proposed proceeding with this bill on Thursday next.

SALE OF LAND BY AUCTION BILL AND REFORMATORY AND INDUSTRIAL SCHOOLS BILLS.

Mr. K. Hugessen asked the Home Secretary whether he intended to proceed with these bills.

Mr. Walpole said he intended to move that the order of the day relating to the Sale of Land by Auction Bill be discharged, but that he would proceed with the other bills if possible that night.

SALE AND PURCHASE OF SHARES BILL.

Mr. Crawford asked the hon. member for York whether it was his intention to proceed with this bill.

Mr. Leeman said he proposed to take the bill on Thursday night.

THE BANKRUPTCY BILL.

Mr. Crawford also asked what course Government intended to pursue with reference to this bill.

The Attorney-General said the hon. member would not be surprised, knowing as he did the magnitude and importance of the subject and the length of the bill, when he heard that it was not the intention of the Government to proceed with the bill during the present session. At the same time her Majesty's Government considered it to be one of the most pressing measures to which their attention could be directed, and they hoped to be able to introduce a bill at the earliest possible moment next session.

RAILWAYS CLAUSES BILL.

This bill was withdrawn.

PUBLIC WORKS, HARBOURS, &c., ADVANCES BILL.

This bill passed through committee.

The New Forest Poor Relief Bill passed through committee.

PETIT JURIES (IRELAND) BILL.

The order for the second reading of this bill was read and discharged.

COMMON-LAW PROCEDURE AMENDMENT ACTS (IRELAND) BILL.

The order for the second reading of this bill was read and discharged.

The Charitable Trusts Deeds Inrolment Bill was read a second time.

The Inland Revenue Bill was read a second time.

The Revising Barristers Qualifications Bill was read a third time, and passed.

The order for the Mines Assessment Bill was read and discharged, as was also the order in Juries in Criminal Cases Bill.

Tuesday, July 17.

THE JAMAICA COMMISSION.

Mr. J. S. Mill.—I beg to give notice, that on Thursday next I shall put the following series of questions to the Chancellor of the Exchequer:—Whether any steps have been or will be taken to bring to trial Lieutenant Adcock for unlawfully putting to death two men, named Mitchell and Hill, without trial, and six persons after alleged trial by court-martial on charges not cognisable by a military court; for flogging without trial Mr. John Anderson and others, and authorising one Henry Ford to flog many men and women without trial, one of whom, named John Mullens, died in consequence. Whether any steps have been or will be taken to bring to trial Captain Hole for hanging one Donaldson without trial; for shooting and permitting to be shot various persons without trial; for putting to death by hanging and shooting thirty-three persons after trial by a so-called military court for acts not cognisable by a military court, and without observance of the rules prescribed by the Articles of War; for flogging various men and women without trial; and for being accessory after the fact to the unlawful putting to death of numerous persons by soldiers under his command. Whether any steps have been or will be taken to bring to trial Lieutenant Oxley for putting John Burdy to death after a similar unlawful trial, and for permitting the men under his command to fire at unarmed peasants, and cause the death of several persons. Whether any steps have been or will be taken to bring to trial Ensign Cullen and Dr. Morris for putting three men to death without trial, and Dr. Morris for shooting one William Gray. Whether any steps have been or will be taken to bring to trial stipendiary magistrate Fyfe for burning houses of peasants, putting to death one person without trial, and being accessory to the unlawful putting to death of various others. Whether any steps have been or will be taken to bring to trial Attorney-General Bishop, Lieutenant Brand, Captain Lake, and Captain Field, for sitting as presidents or members of alleged courts-martial, by whom numerous persons were unlawfully put to death. Whether any steps have been or will be taken to bring to trial General O'Connor, for having been accessory before and after the fact to numerous unlawful executions, some of them without trial, and others after the illegal trials already specified. Whether any steps have been or will be taken to bring to trial Colonel Nelson, Brigadier-General in Jamaica, for unlawfully causing to be tried in time of peace, by military courts irregularly composed, for acts alleged to have been done before the proclamation or beyond the jurisdiction of martial law, and after such trial to be unlawfully put to death the following persons—George William Gordon, Edward Fleming, Samuel Clarke, William Grant, George Macintosh, Henry Laurence, Letitia Geoghan, and six other women, one of them in a state of pregnancy; Scipio Cawell, Alexander Taylor, Toby Butler, Jasper Hall Livingstone, and various other persons who had been previously flogged; and about 180 other alleged rebels; and for authorising the flogging without trial of Alexander Phillips, Richard Clark, and numerous others. Whether any legal proceedings have been or will be ordered to be taken against Mr. Edward John Eyre, lately Governor of Jamaica, for complicity in all or any of the above acts, and particularly for the illegal trial and

execution of Mr. George William Gordon. If not, whether her Majesty's Government are advised that these acts are not offences under the criminal law.

COURTS OF JUSTICE.

Mr. Hunt obtained leave to bring in a bill to amend the acts relating to the intended courts of justice.

EXPIRING LAWS.

On the motion of Mr. Hunt, a select committee was appointed to inquire what temporary laws of a public and general nature are now in force, and what laws of the like nature have expired, since the last report upon the subject; and also what laws of the like nature are about to expire at particular periods, or in consequence of any contingent public event.

COUNTY ASSESSMENTS BILL.

The bill was read a third time, and passed.

The Charitable Trusts Deeds Inrolment Bill passed through committee.

Wednesday, July 18.

THE PURCHASE AND SALE OF SHARES BILL.

Mr. Fildes asked the hon. member for York whether he intended to limit the operation of this bill, the second reading of which stands for Thursday, to Joint-stock Banks and Joint-stock Discount Companies.

Mr. Leeman said he intended to adopt the amendment of which his hon. friend had given notice, and to limit the operation of the bill to the extent proposed.

LEGITIMACY DECLARATION BILL.

Mr. T. Chambers, on moving that the order for the second reading of this bill be discharged, explained that the object was to remove the difficulties which stood in the way of trial by jury on questions of legitimacy.

Mr. Craufurd, whose name appeared on the back of the bill, begged to inform the House that, relying on the high professional standing of the hon. member who had just sat down, he had consented to allow his name to be put the bill, believing that it was simply intended to secure trial by jury. On receiving a copy of the bill, he found it was the same measure that had been frequently brought forward by the hon. gentleman now the Chief Baron of the Exchequer Court (Sir Fitzroy Kelly), which had been always rejected by the House, and one to which he was entirely opposed. He was satisfied that the doubts the hon. member had expressed with reference to the act now in force did not exist at all.

The order for the second reading was then discharged, and the bill withdrawn.

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Sir J. Stuart, V. C. (in *Sidebottom v. Adkins*), in quoting this work, speaks of it as "a very valuable text-book."—*3 Jurist*, N. S., 632.

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THE JURIST.

LONDON, JULY 28, 1866.

THE CASE OF GORDON.

THE case of Gordon is likely to be a leading case on the subject of martial law, for which reason we commented upon it in an article in January. We then examined the question of the legality of the trial, with reference either to the authority of courts-martial under martial law, or to the arrest of the prisoner in a district *not* under martial law, or to the supposed insufficiency of the evidence. And we expressed our opinion (in opposition to a very positive opinion to the contrary), that courts-martial *had* authority under martial law; that the removal of the prisoner into the district under martial law was perfectly legal (upon the fundamental principle, that the trial of crime is *local*), assuming that he had committed or been party to the commission of a crime in that district; and that the question, whether he *had* been party to such a crime, was for the court-martial, provided there was *any* evidence on which *they* might honestly come to that conclusion. And, finally, we decried as absurd, the idea of trying Governor Eyre for *murder*; and declared that, though, no doubt, it would be competent to any one, under the 43 Geo. 3, to *prefer* an indictment for murder against him, no judge who charged the grand jury would fail to tell them that they must *not find* the bill unless satisfied that the execution was the result of a wicked conspiracy between the governor, the general, and the court, to execute the prisoner under *colour and pretence* of martial law, not *really* believing him to be guilty, and not *really* in pursuance of a trial and sentence, but merely in pursuance of a murderous conspiracy. Upon which direction, of course, as there would not be a particle of evidence of anything of the kind, no jury would find the bill. These conclusions are now admitted by all rational persons. In an article of the 30th June we adverted to the Report of the Commissioners, which contained nothing at variance with them. And the chairman of the Jamaica committee—formed mainly for the purpose of prosecuting Mr. Eyre—has avowed himself so satisfied of the absurdity of the idea, that he has not only declined to adopt it, but has publicly denounced it, and retired from the chairmanship of the committee. We must say, it is scandalous that such a committee should ever have been formed—acting, as they did, for the avowed purpose of promoting a criminal prosecution, and taking every possible means to poison the fountains of justice, and prevent the accused from having a fair trial. This may not have been *intended* by the committee (at all events, by its more respectable members), but it was the *effect* which the means they took was necessarily calculated to produce, and for which, therefore, they would have been criminally responsible. Among the means they have taken was the publication of inflammatory appeals, and even of a legal opinion, tending to shew that Mr. Eyre had been guilty of murder;

and almost all our cotemporaries—even our *legal* cotemporaries—were so far turned away by partisan feelings, as to advocate that view. This was the very offence for which Sir Francis Burdett was severely punished. (*Rex v. Burdett*, 4 B. & Al. 95, 314). He had published a letter to the effect that the military, in what he called “the Manchester massacre,” were guilty of murder, and for this he was fined and imprisoned, on the ground that it had the necessary *effect* of tending to prevent them from having a fair trial. This case is apposite to Gordon’s case, in more points than one; for in that case, as in a previous case (*Rex v. Harvey and Chapman*, 2 B. & Cr. 257), it was recognised as undoubted law, that if a man publishes matter *calculated* to produce a mischievous effect, it must be taken that he *intended* to produce that effect, and is responsible for it.

This brings us back to Gordon’s case, with reference to the supposed liability of any one for his murder. We assume—for it has already been established in our former articles, and it is evidently assumed and implied in the Commissioners’ Report—that the trial was *legal*; that, as we shewed in our article of the 30th June, would depend on the authority of courts-martial under martial law, which is recognised by the Commissioners, and on the jurisdiction of the court over the particular person and the particular charge, which we established in our article of January, and which is considered very elaborately in Mr. Finlason’s “Treatise on Martial Law.” But, assuming the legality of the trial, in the sense of the authority of the court, and their jurisdiction over the prisoner, it is said that the conviction was illegal, because it was not supported by the evidence. This, in a legal point of view, is perfectly absurd. Nothing is more common than for a judge in a court or criminal case to express his *dissent* from the verdict; nay, as Mr. Finlason observes, it is not uncommon for the judge on a criminal trial to tell the jury that, in his opinion, the evidence is not sufficient to sustain the charge, and yet for the jury to convict contrary to his opinion. The judge has no power to withdraw the case from the jury, if there is *any* evidence, however he may differ from them as to its weight and effect, for its weight and effect is for *them* to consider; and if there is any evidence for them to consider, then there is evidence which will legally warrant them in finding the prisoner guilty, notwithstanding that the judge does not deem it sufficient—nay, considers it wholly insufficient to sustain the verdict.

In a criminal case there is no mode of reviewing the judgment of the jury upon the facts; and even in a civil case, where there is, the Court will not set aside a verdict merely because the judge differs from the verdict, and deems the evidence was insufficient to sustain it. We must go further, and say, that it was against the *weight* of evidence; and then it is a matter of discretion to grant a new trial even in a civil case; and it will not be granted if it appears that justice has been done; and the verdict cannot be set aside as matter of *right* and of *law*, if there was *any* evidence, although the verdict was against the weight of evidence. And, as already mentioned, in a

criminal case, the verdict cannot be disturbed in such a case, if there was *any* evidence, although it was so much against the *weight* of evidence that the judge strongly dissented from it, and advised the jury to find the prisoner not guilty. It is manifest, therefore, that, on a trial by court-martial, the finding is legal if there is *any* evidence upon the charge.

Now, what was the charge against Gordon? Treason, and inciting to rebellion. That was the substance of it. As to treason, we may dismiss it, because the statutes as to constructive treason only apply to the *realm*. The charge, then, in effect, was inciting to rebellion. That is, complicity with those who were engaged in the massacre or inciting to rebellion. *Not complicity in the massacre*. It was naturally but erroneously supposed, that to justify the execution, an offence capital at common law must have been sustained; that is, treason or murder. And as treason was out of the question, and to make a man guilty of murder, he must have been a party to it, that is, have caused and procured it, or helped to cause and procure it, it was assumed that it was necessary to shew that Gordon had *planned and intended the particular massacre*; of which there certainly was not sufficient evidence. This is what was meant by people who said that his execution was a murder, and so forth; and probably this is what the Commissioners meant when they said that the evidence, in their opinion, was wholly insufficient to sustain "the charge;" though they did not say (he it observed) that there was not sufficient evidence to warrant the *court-martial* in finding the prisoner guilty on some part of the charge. They evidently supposed that it was necessary to prove that he designed and *intended* the particular massacre. But it was not so; for (as Mr. Finlason shews in his book), under martial law, inciting to rebellion is a capital offence; for it is so by military law, as we have been shewn lately by the trials of soldiers for Fenianism in the army in Ireland. And neither at common law, nor by military law, is it at all necessary that the party should have *actually intended* the mischief which has resulted. It is enough (as *Burdett's case* shews) if his acts or words were *calculated* to produce the mischief which ensued; that is, it is enough if his words were *calculated* to incite to rebellion or insurrection. Now, that this was so in the case of Gordon is so much beyond a doubt, that it would be worse than idle—it would be a mere insult to our understandings—to pretend that it was not so. He did not dispute the proclamation on the "state of the island," in which he told the excitable negroes that their patience must be exhausted, and that they must now be up and doing. What would this be understood by *them* as meaning? And it was proved, that a few days before the massacre he had sent this seditious proclamation to the active ringleaders for circulation in the disturbed district. Now, these facts were *not disputed*; and they alone were sufficient to sustain the conviction under martial law. But this was only the weakest part of the case. A witness came and swore that he heard the prisoner say to the active ringleader, that "the blacks must have the land, and the whites must die." This, again, of itself would be *legally*

sufficient to sustain the charge. What *would it be understood by the blacks to mean?* That is the real question. And it was a question for the Court, if *they* were satisfied—coupling this with the other evidence—that the *natural effect* was to incite the blacks to rise, their finding was justified. But this was not all. There were *depositions* of two witnesses, that at a meeting in the disturbed district the prisoners told the blacks to do as they have done in Hayti—i. e. rise and massacre the whites. This evidence was not legally *necessary*, the strictly legal evidence being amply enough to sustain the finding, as a matter of law. And if the finding had rested upon the *depositions alone*, then it might have been said that it was not *satisfactory*; though even then it is a mistake to suppose that they were not legally admissible, for depositions are legally admissible in certain cases (and in others they are not objected to), and courts-martial under martial law are not bound by the strict rules of legal evidence. But the depositions were not *necessary*, and were only confirmatory of other evidence, which was legally admissible, and which was sufficient to sustain the finding, because shewing that the prisoner had, *in fact*, incited to the rebellion in the disturbed district; that is, that he had used language *calculated* to have that effect, whether he *intended* it or not. That he *did* intend it, and that he intended the particular massacre, though not legally necessary to justify the finding, there was, however, *some* evidence. It was proved that he had said that "his people would be revenged upon the magistrates" who were murdered. It was proved that he had called the negroes at the seat of the rebellion "his people." It was proved that the massacre was committed by his intimate political associates upon his political enemies; and it was proved that he spoke of it after the event without any reprobation. There was, therefore, evidence that he *intended* this particular massacre; and very strong evidence, when it is considered how unlikely it was that his associates would have taken so serious a step as a deliberate insurrection without his privity. The contrary view was rested on a denial of *any conspiracy at all*. But the Commissioners report, upon overwhelming evidence, that there *was* a conspiracy for the massacre; and it was a conspiracy by his intimate political associates. Could he have been ignorant of it? The natural inference would be, that he was *not*. And by military law the mere concealment of such a danger would be a capital offence. The courts-martial in Ireland have shewn us that. We repeat, however, it was not necessary to shew that he was privy to the particular massacre. It was enough that he had used language *calculated* to incite to rebellion; and this was beyond a doubt. The sentence, therefore, was in every respect perfectly legal.

And even if it were not so, there would be great legal difficulty in making the governor criminally liable for the execution. For, as Mr. Finlason shews, in his book, the effect of martial law is to make the *general* in command the supreme authority in the district; and it was the general in command who directed the trial. All that the governor did was to send the prisoner into the district where the rebellion broke

out; and where, beyond all doubt, *either* at common law or by martial law, the prisoner was triable. It was the *general* who considered and decided that he was triable under martial law. Then he stated at the time in his report:—"After six hours search into the documents connected with the case of G. W. Gordon, I found that I had sufficient evidence to warrant my directing his trial. I prepared a draft charge and precis of evidence for the court. It assembled about 2 P. M. this day, and closed its proceedings after day light. The President having transmitted them, I carefully perused them. The sentence was death. I considered it my duty fully to approve and confirm. . . . I inclose the whole of the proceedings of the court for your information, as you may desire to see what evidence led to the conviction of so great a traitor. I have not furnished any report of the court to his excellency the governor, because his excellency is now at Kingston. I apprehend all my report should be made through you, my immediate commanding officer. Hoping, as heretofore, to gain your approval."

This report was sent, *not* to the governor but, to the commander-in-chief of the colony, the general military superior and the supreme military authority on the island, who alone, by military law, could reconsider and review the sentence, and refuse to confirm it. By military law it is very questionable whether the governor could have disapproved and set aside the finding. Indeed, it is clear that he could not except by an extraordinary exercise of the prerogative. Previously it was a purely military matter. Accordingly the general did not send a report to him; and though the commander-in-chief sent it to him, it was only as a matter of courtesy, or to afford him an opportunity of exercising the prerogative. For he had previously approved of the sentence, and wrote to the War Office that he had approved of it; and all that can be said of Governor Eyre, therefore, was, that he did not think proper to interfere by the exercise of the prerogative to prevent the execution. It is perfectly ridiculous to call this murder; as every lawyer knows mere nonfeasance will not make a man a murderer. There must be an act, and a *direct* act. The party to be tried must have directly committed or caused the act; and if other persons who had legal power to do it intervened and directed it, all that can be said is, that he did not *prevent* their doing it; it is a nonsensical abuse of terms to call that murder, no matter how unjustifiable the sentence was, unless there was a conspiracy to commit a murder under *colour* of martial law.

To shew this, however, several things must be shewn; that the prisoner was innocent; and that there was no pretence for supposing him guilty; and that the parties concerned did *not*, in fact, however wrongly, believe him to be so. But can any man in his senses suppose either of these things? Can any one suppose, for instance, that General Nelson and General O'Connor, when, after reading the proceedings, they approved and confirmed the sentence, did not *believe* there was evidence? Mr. Buxton and the *Saturday Review* see the absurdity of such a supposition. And if the *generals* considered there was sufficient evidence

to sustain the sentence, why should it be supposed that the *governor* did not think so? Especially as it was a purely military matter; a military trial; for a military offence; under military law; with a military penalty to be inflicted under military authority. In such a case he would naturally yield to military judgment. And in point of law the execution was their act, not his. The idea of making him, or any one else, guilty of murder for it, is a downright absurdity. If, indeed, there had been a conspiracy among all the parties to execute an innocent man, under colour of martial law, then it would have been murder. But Mr. Buxton and the *Saturday Review* see the absurdity of such an idea, and scout it. Mr. Buxton, indeed, is under the impression that the Commissioners have reported the innocence of Gordon. That is a complete mistake. They have done nothing of the kind. They have carefully avoided doing so. What they have said is, that, in their opinion, the evidence was insufficient to sustain the charge—that is, the *whole* charge, as they evidently understood it. Not that the evidence was insufficient to warrant the court in finding any part of the charge proved—that he incited to rebellion; still less, that he was innocent of such incitement. On the contrary, they go on to say that he did, in fact, incite to rebellion; that is, that he used language calculated to incite the blacks to rise, although they choose to say that they think he did not intend it. With great respect, we venture to say that the lawyers on the commission ought to have known that this was legally immaterial; and, no doubt, they did know it as to sedition; only they fancied that it was necessary to convict Gordon of murder. They forgot that the trial was under martial law which makes incitement to sedition capital.

This would be the logical result of not fully realising the fundamental principle that martial law is the *application to non-military persons of military law*. That this is so is shewn by the authorities cited in Mr. Finlason's work, and that the Commissioners failed to grasp this, and, in fact, went through their inquiry on the very contrary view, is clear from the statement of Mr. Gurney, to which we referred last week, that courts-martial under martial law had no authority, "because the Mutiny Act did not apply." Of course it does not, for it only applies to military persons, and is only necessary in time of peace. But if rebellion is war, and the proclamation of martial law is the declaration of a state of war, and the application of military law to the whole population—that is, of military rule as it applies in time of war, by virtue of the prerogative, apart from Mutiny Acts—then the result would be, that non-military persons are liable to be tried for military offences; and, by the military law, inciting to sedition is capital. Assuming this, then Gordon's execution was legal, no matter how innocent he was of *more* than mere incitement to sedition, and no matter what were his actual intentions. This was the view of Governor Eyre, and General Nelson, and the Commander-in-Chief, and Mr. Finlason, who elaborately examines the case, contends that it is the right view. Assuming the contrary, then, *whatever* Gordon's guilt may have been, there was no legal au-

thority to try him, and his execution was legally a murder. And it must have been upon this view that a learned judge is said by Mr. Bright to have told him that the execution of Gordon was a murder. But this is not the Commissioners' view, for the logical result would, of course, be, that *all* the trials were illegal, and *all* the executions legally murders; whereas they say that they were, with few exceptions, unimpeachable.

It is obvious that the notion of Gordon's execution being unjustifiable has arisen entirely from erroneous notions as to the effect of martial law. No judge could have meant anything so absurd as that the legality of an execution depended on the actual guilt, or the degree of guilt, of the accused. It depends, it is obvious, on the legality of the trial; and that depends on the existence of a jurisdiction or authority to try, and the *substantial* fairness of the trial; against which the Commissioners say not a word; for what they say, in effect, is, that they do not concur in the propriety of the verdict, which is utterly immaterial, in a legal point of view, especially as it proceeded on a manifest error. To dream of making *murder* out of the case is pure nonsense.

PROSPECTUS OF THE LECTURES

To be delivered during the ensuing Michaelmas Educational Term, by the several Readers appointed by the Inns of Court.

CONSTITUTIONAL LAW AND LEGAL HISTORY.

The Reader on Constitutional Law and Legal History will, during the ensuing Educational Term, deliver a Course of Six Public Lectures on the History of the English Constitution and of English Law in the reign of George I.

With his Private Class, the Reader will go through the principal Statutes, State Trials, and other State Documents in the reigns of James I and Charles I, and will use Hallam's Constitutional History as his chief Text-book.

EQUITY.

The Reader on Equity proposes to deliver, during the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

An Elementary Course.

1. On the Origin and Nature of the Feudal System, the Private Jurisdictions to which it gave rise, and their influence on Judicial Procedure in England.
2. On the Establishment and History of the Court of Chancery.
3. On the Limits of the Equitable Jurisdiction.
4. On Pleadings in the Court of Chancery.

An Advanced Course.

1. On the Jurisdiction exercised by the Court of Chancery concurrently with Courts of Law.
2. On Voluntary Conveyances and Settlements.
3. On Donations Mortis Causâ.

In the Elementary Private Class, the subjects discussed will be—The Creation and Incidents of Express Trusts, and the Remedies for Breaches of Trusts.

In the Advanced Private Class, the Lectures will comprehend—Implied and Resulting Trusts, and the Doctrine of Equitable Conversion.

THE LAW OF REAL PROPERTY, &c.

The Reader on the Law of Real Property, &c., pro-

poses to deliver, in the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course) on the following subjects:—

Elementary Course.

The Acts to further amend the Law of Property, the 22 & 23 Vict. c. 35, and the 23 & 24 Vict. c. 38.

Advanced Course.

The Law of Waste.

In his Private Classes the Reader will, with the Elementary Class, commence a course of Real Property Law, using as a Text-book Mr. Joshua Williams' Principles of the Law of Real Property; and with the Advanced Class, the Reader will examine and comment upon Cases selected from Mr. Tudor's Leading Cases on Real Property and Conveyancing.

JURISPRUDENCE, CIVIL, AND INTERNATIONAL LAW.

The Reader on Jurisprudence, Civil, and International Law proposes, in the ensuing Educational Term, to deliver Six Public Lectures on—

1. The Influence of the Roman Law upon the Principal Systems of Modern Jurisprudence, and particularly upon the Systems of England and her Colonies.

2. The Progressive Development of the Law, as illustrated by the History of the Ancient Roman Law.

3. The Sources and Constituents of International Law.

In his Private Class, the Reader will commence the Course of Roman Civil Law, with the consideration of the First Book of the Institutes of Justinian, using Sanders' Edition, and the Systema Juris Romani of Mackeldey as Text-books, and contrast it with the modern French Law upon the same head.

The Reader, in his Private Class, will also discuss points of International Law relating to the Rights and Obligations of Neutrals, using the work of Wheaton as the Text-book, and referring to the works of the principal modern Jurists, the decisions of the Admiralty and Prize Courts of England and America, the Debates in Parliament, and State Papers relating to the cases under discussion.

COMMON LAW.

The Reader on Common Law proposes to deliver, during the ensuing Educational Term, Two Courses (of Six Public Lectures each) on the following subjects:—

Elementary Course.

1. The Method of studying our Common Law, by reference (1) to Principles, (2) to Leading Cases.

2. The Sub-divisions of our Common Law—with the Characteristics of Contract, Tort, and Crime respectively.

3. The Mode of Proofs required in Courts of Law.

Advanced Course.

1. The Jurisdiction of our Common Law Courts in regard to Contract, Tort, and Crime.

2. Rules of Law as applied to Legal Arguments and Judgments.

3. Rules of Evidence of ordinary applicability.

With his Private Classes, the Reader will examine in detail the Subjects above specified—especially directing attention to important cases, and using for reference the following books:—

Elementary Class.—Broom's Commentaries (3rd ed.); Taylor on Evidence (4th ed.)

Advanced Class.—Smith's Leading Cases (last ed.); Roscoe's Science of Legal Judgment; Taylor and Best on Evidence.

By order of the Council,

WESTBURY, Chairman.

Council Chamber, Lincoln's-inn,
July 12, 1866.

JULY EXAMINATION ON THE SUBJECTS OF THE LECTURES AND CLASSES OF THE READERS OF THE INNS OF COURT,

Held at Lincoln's-inn Hall on the 2nd, 3rd, and 4th days of July, 1866.

THE Council of Legal Education have awarded the following Exhibitions to the under-mentioned Students, of the value of thirty guineas each, to endure for two years:—

CONSTITUTIONAL LAW AND LEGAL HISTORY.

Douglas Kingsford, Esq., student of the Middle Temple.

JURISPRUDENCE, CIVIL, AND INTERNATIONAL LAW.

William A. Hunter, Esq., student of the Middle Temple.

EQUITY.

Edward Ford, Esq., student of Lincoln's-inn.

THE COMMON LAW.

T. De Courcy Atkins, Esq., student of the Middle Temple.

THE LAW OF REAL PROPERTY, &c.

John Shortt, Esq., student of the Middle Temple.

The Council of Legal Education have also awarded the following Exhibitions of the value of twenty guineas each, to endure for two years, but to merge on the acquisition of a superior Exhibition:—

EQUITY.

Robert Bannatyne Finlay, Esq., student of the Middle Temple.

THE COMMON LAW.

Robert Bannatyne Finlay, Esq., student of the Middle Temple.

THE LAW OF REAL PROPERTY, &c.

Thomas Charles Finest Pozold, Esq., student of the Middle Temple.

By order of the Council,

(Signed) WESTBURY, Chairman.

Council Chamber, Lincoln's-inn,
July 12, 1866.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, July 19.

THE EXTRADITION TREATY WITH FRANCE.

The Lord Chancellor said that he had to lay on their Lordships' table a bill relating to the law as to extradition treaties. We had had for some years an extradition treaty with France; but, in consequence of the dissatisfaction felt by the French Government in regard to that treaty, they gave notice in last December of the intention to terminate it at the expiration of six months from that time. The late Government was fully alive to the importance of maintaining the treaty, and immediately entered into negotiations with the French Government. They were met in the most friendly and cordial spirit by the French Government, who agreed to extend the term of the treaty for six months longer, so that it would not expire until the 4th December, 1866. At the same time they intimated that, unless some alteration was made in our law, whereby effect could be given to the treaty, which they considered to have been almost a dead letter, they would be obliged to abandon that treaty. The late Secretary of State for Foreign Affairs thereupon directed the present bill to be prepared, which the present Government thought perfectly unobjectionable, and well adapted to meet the exigencies of the case. The law of extradition in this country only dated from 1843. In that year two treaties were signed with France

and the United States, and acts of Parliament were passed in order to give effect to them. It was extraordinary that these were the only treaties of the kind concluded until 1862, when a similar treaty was made with Denmark, and these were still the only extradition treaties that we had. France had no less than fifty-three of such treaties, and she had found no difficulty with regard to other countries. But from 1843 to 1863 not a single criminal was given up to France by this country. That arose partly from the view taken of his duty by the magistrate to whom these cases were referred during that period. He thought that he was bound to inquire into the guilt or innocence of the person accused, instead of merely satisfying himself that there was sufficient evidence to justify him being sent for trial. Another ground of complaint with regard to our law of extradition was as to the proof required to establish the authenticity of the documents transmitted to establish the case. The Legislature had felt that it would lead to great delay and difficulty if foreign countries were obliged to send witnesses over here; therefore copies of depositions certified by the judge who issued the warrant, was admitted in evidence. But, in addition to that, the 6 & 7 Vict. provided that these depositions should be proved to be true copies by the witness who brought them over. Now this was a kind of proof that was not required in the case of documents emanating from one of our courts when produced in another; and the French Government felt that it was an indignity that they should be compelled to send over a witness to prove the genuineness of documents which were certified under the seal of the Minister of Justice. Now the bill which had been proposed by the late Government, and which he was now asking them to read a first time, simply amended the law by enabling these documents to be verified in the ordinary way in which our judicial documents would be admissible in our courts—that was, by the seal of the tribunal from which they emanated. He believed that if this amendment of the law were adopted, although it might not entirely satisfy the French Government, it would go a long way to reconcile them to our law, and would induce them to abandon their intention to discontinue the treaty. It had been supposed in the discussions that had taken place on this subject, that the French Government desired to give such effect to the treaty that, by charging offences against particular persons, they might get possession of them and then try them for political offences. But the law was so strict on this subject in France, that if a person was delivered up under an extradition treaty, he could only be tried for the offence in respect of which he was surrendered, and if he was acquitted on that he was allowed to quit France and return to the place from which he was brought, although he might have been guilty of twenty other offences. Then it was supposed that France had some sinister object in wishing to have fugitive criminals who had been condemned in their absence delivered up. But the fact was, by the law of France, whenever a person who had been condemned par contumace was delivered up, he was put on his trial just as if no such condemnation had taken place. The noble and learned Lord concluded by expressing his regret that the existing treaty only included persons who had been guilty of murder, attempt to murder, forgery, and fraudulent bankruptcy; by referring to embezzlement as an offence to which it was very desirable it should extend; and by stating his hope that this point would receive consideration if this bill should pass. He then moved the first reading.

After a few remarks from Earl Clarendon,

The bill was read a first time.

MASTERS AND OPERATIVES BILL.

Lord St. Leonards said, that when he introduced this bill, he stated that he should not move its second reading unless he found it was likely to be acceptable to both parties. He had found that the operatives were generally desirous to have the bill, but that the masters were adverse to it. He had discussed the provisions of the bill with delegates representing 100,000 operatives, who had, at the end of the interview, expressed their entire satisfaction with it. But as the masters were of opinion that it would not be advantageous to them, he should not ask their Lordships to read the bill a second time. He should now withdraw the bill, but he should reintroduce it next session, and then proceed with it if he was adequately supported by petitions from the working classes.

The Earl of Shaftesbury expressed a strong opinion, that

unless some bill of the kind were passed, the disputes constantly arising between masters and men would lead to incessant strikes. He regretted, therefore, that the noble and learned Lord had found it necessary to withdraw the bill.

The Revising Barristers' Qualification Bill was read a second time.

Friday, July 20.

The Revising Barristers' Qualification Bill passed through committee.

THE EXTRADITION TREATIES ACT AMENDMENT BILL.

On the order of the day for the second reading of this bill, Lord Teynham asked for certain explanations as to its effect, and

The Lord Chancellor said that the measure would not in the slightest degree affect the duties of the English magistrate to see that there was good ground for putting a man on his trial before his extradition was sanctioned.

The bill was then read a second time.

Monday, July 23.

THE ECCLESIASTICAL COMMISSION BILL.

The Earl of Chichester inquired whether it was the intention of the Government to proceed with this bill.

The Earl of Derby presumed the noble Earl was aware that the bill had not been introduced by the present Government. It contained clauses which would lead to very considerable controversy; but if his noble friend would consent to the withdrawal of those provisions in the bill which gave compulsory powers to deal with the dean and chapter, the Government would do their best to insure that the remainder of the measure should pass during the present session.

The Earl of Chichester assented to the course proposed.

SALE OF ESTATES BY AUCTION.

Lord St. Leonards drew attention to this subject, with respect to which he had introduced a bill during the present session. The measure, however, had been withdrawn from the other House in consequence of the lateness of the session. It had been introduced by him to make common law and equity agree with respect to sales of land by auction. He wished to give a warning to solicitors and auctioneers as to the course which they might pursue in conducting sales during the recess. If, acting as they had hitherto done, they gave bids without the knowledge of purchasers, every one of those sales would be void. The duty of an auctioneer was to take bids, not to make bids, and nothing but mischief could ensue from their adopting the opposite course. Two cases had lately been decided in courts of justice, one of them by his noble and learned friend opposite, shewing that courts either of law or equity would not hesitate to interfere where the auctioneer had acted as a puffer to the disadvantage of the purchaser. It was with the utmost surprise he had learnt that the system existed even in the Court of Chancery, where, if anywhere, a perfectly fair and open sale might have been looked for. From the interest he took in the matter, from the long experience of sales and means of information, he had been as likely as any body to know what the practice was in such transactions, but till he introduced this bill he had not the slightest conception that any auctioneer was in the habit of bidding at a sale where, by order of the Court, there was a reserved price. As long as attention was not called to the matter it was not, perhaps, of such great consequence; but now, after the discussions which had taken place, a purchaser wishing to get rid of his bargain would feel no hesitation in repudiating the contract where this had been vitiated by the conduct of the auctioneer. This would throw upon the owner the necessity of bringing an action or filing a bill, either of which courses must fail when the fact transpired that the auctioneer has made bids without the authority of the purchaser. The bill as it stood at present was mere waste paper, but he should take the earliest opportunity in his power of again bringing it forward, and, meanwhile, he advised the attorneys and auctioneers to work its provisions fairly, and next year they would be able to tell practically whether these ought not to be adopted.

The Earl of Malmesbury said his noble and learned friend did good service in warning solicitors and auctioneers of the actual state of the law; but he had no scruple in telling his noble friend and the House that the public feeling in favour of this bill had not increased. Many professional men had

warned their clients that this was a buyer's, not a seller's bill. He did not dispute the great experience of his noble friend, who was a great buyer of land, and frequently preferred to attend auctions himself instead of trusting anybody else; but he was unable to see the great evils of which his noble and learned friend had spoken in the circumstance that the auctioneer became also the agent of the seller, bidding up to a certain reserved point, and thereby preventing the estate from being accidentally and suddenly sacrificed.

HOUSE OF COMMONS.—Friday, July 20.

LAW OF CAPITAL PUNISHMENT.

Mr. Ewart asked the Secretary of State for the Home Department what course the Government intended to pursue with regard to the Law of Capital Punishment Amendment Bill.

Mr. Walpole said the Government did not intend to proceed with the bill.

JURIDICAL SOCIETY.—A meeting of the Society was held on Wednesday, the 11th instant, when a paper was read by the Rev. Frederick Denison Maurice, intitled "On the Means of checking Bribery and Intimidation in the Election of Members of the House of Commons." W. T. S. Daniel, Esq., Q. C., presided.

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"Mr. Justice Willes, in *Brigg's case*, referred to Best on Evidence (which he characterised as one of the best books on our laws) as to proof of a negative."—*Dearly & Bell's Crown Cases*, vol. 1, p. 102.

Sir J. Stuart, V. C. (in *Sidabottom v. Adkins*), in quoting this work, speaks of it as "a very valuable text-book."—*3 Jurist*, N. 8, 632.

"... and in Mr. Best's very learned and philosophical Treatise on the Principles of Evidence all the authorities which were in existence when that work was written are fully considered."—*The Solicitors' Journal*, 17th March, 1860.

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N O T I C E.

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THE JURIST.

LONDON, AUGUST 4, 1866.

THE case of *Marsden v. The City and County Insurance Company* (12 Jur., N. S., part 1, p. 76), affords an instance of the application of the maxim, "In jure non causa proxima sed remota spectatur." The plaintiff had insured certain plate glass windows against all loss or damage originating from any cause whatsoever, except fire, breakage during removal, alteration or repair of premises. A fire broke out in a house adjoining the plaintiff's, and when it reached the back part of his premises, some twenty or thirty yards from the windows insured, the plaintiff called in the assistance of his neighbours to remove his stock-in-trade and furniture. Soon after a mob tore down the shutters of the shop, and broke the windows insured. On behalf of the defendants, it was contended that they were not liable, because the damage might be said to have originated either from fire or breakage during removal; but the judges of the Common Pleas did not accede to this view; the Lord Chief Justice Erie pointed out that fire was the remote cause only, and the violence of the mob the proximate cause; and that the damage could not be said to have originated from breakage during removal, whether the words of the policy were to be understood to mean removal of the plate glass itself, or of the stock-in-trade, from one set of premises to another; for to remove the plate glass or the stock-in-trade into a place of safety could not be said to be a removal within the meaning of the policy. In the course of the argument, *Everett v. The London Insurance Company* (11 Jur., N. S., part 1, p. 546) was quoted as a case in favour of the insured. In that case the plaintiffs had effected with the defendants a policy of insurance on his property, including a house, against loss or damage by fire. The fifth condition provided, that losses by lightning would be made good where property insured by the defendants had been actually set on fire thereby, and burnt. The eighth condition provided, amongst other things, that gunpowder would not be insured, or comprehended in any insurance effected by or with the defendants, nor would any loss or damage, in any case or of any description, be made good when more than 25lbs. weight of gunpowder should be deposited or kept on the premises. A large quantity of powder having exploded in a magazine near the plaintiff's property, which included buildings, damage was sustained to the extent of 20%, not from burning, but from the concussion of the air. It was urged, that the eighth condition shewed that a loss by gunpowder was in the defendant's contemplation at the time the policy was entered into. But the Court held, that the defendants were not liable; that the damage arising from a violent but distant explosion of gunpowder did not fall within the meaning of their contract. During the argument, *Austin v. Drewe* (6 Taunt. 436), decided in 1816, was cited. The defendant had covenanted to insure the plaintiffs against all damage which they should suffer by fire on their stock and utensils in

their sugar house; the defendant pleaded, in effect, that the damage was caused by smoke arising from badly regulated fires. At the trial before Sir V. Gibbs, C. J., the evidence was, that the building insured contained many stories, in each of which sugar was deposited, and owing to some mismanagement of a fire, smoke and sparks had got into the room where the sugar was deposited, and had done considerable damage; but nothing was on fire which ought not to have been on fire. The Court of Common Pleas held, that the insurers were not liable for the damage done to the sugar.

The principle of the decisions in the above cases seems reasonable and in accordance with the maxim above quoted; but they may be also justified by the rule, that a contract must be construed in that way which will best give effect to the intention of the parties at the time when it was entered into. The explosion of a powder magazine is so unusual an event that it can hardly be said that insurers, unless their attention be specially drawn thereto, can intend to render themselves liable to make good damage arising therefrom. As an illustration of this rule, may be mentioned the recent case of *Chapman v. Gwyther* (12 Jur., N. S., part 1, p. 522), in which the defendant had sold to the plaintiff two horses; and in a memorandum of the sale, signed by the defendant, were inserted the words "warranted sound for one month." One of the horses having proved to be unsound, and being objected to by the plaintiff after the expiration of a month from the time of sale, the defendant refused to take it back. The jury found that the horse was unsound at the time of the sale. The judge who tried the case thereupon directed a verdict to be entered for the plaintiff, but the Court of Queen's Bench, after argument, decided that the defendant was not liable; for they held that the words "warranted sound for one month" must be taken to mean that objection to the horse on the ground of unsoundness must be made within one month from the time of sale. Mr. Justice Blackburn in the course of his judgment pointed out, that if the undertaking was, that the horse was sound, and would continue so for a month, and that the warrantor held himself liable for any disease which might attack the horse during that period, it was manifest that such a contract would have been a most imprudent and absurd one on his part.

The conclusion at which their Lordships arrived was undoubtedly correct. The construction which the plaintiff wished to put on the words would have been open to the absurdity, that the defendant might have been liable after the lapse of many months for unsoundness contracted during the month which elapsed after the sale. There was no charge of fraud, the jury having found that the defendant was unaware of the unsoundness existing at the time of sale. This, of course, would have materially altered the aspect of the case; and a count charging the defendant with fraud would, no doubt, have been inserted in the declaration on which the plaintiff would have been entitled to succeed, however long a time less than six years from the date of the warranty might have passed before the unsoundness was discovered by him.

Reviews.

The Law of Wills as administered in the Court of Probate. By F. A. Inderwick, Esq., of the Inner Temple, Barrister-at-Law. 8vo., pp. 203. [Macmillan.]

THE subject of this book is a branch of the general law relating to wills, as treated in the great work of Mr. Jarman. The innumerable questions which relate to the construction of wills, and the validity of the particular dispositions of property which may be attempted in them, are beyond the scope of Mr. Inderwick's design. He confines himself to the constitution of the testamentary instrument as a whole, with reference to—1. The capacity of the testator in respect of age, status, and mental soundness. 2. The form in which the instrument is made and executed; and special legislative provisions with respect to the wills of soldiers and mariners. 3. The total or partial revocation of a will. 4. The revival of a will; and, 5. The presumption of the completion of the testamentary act by death.

These are all subjects which have been treated of in detail in many treatises of ability. They are carefully and succinctly expounded in the work before us, which has the advantage of containing the most recent decisions and statutes, and the advantage, or disadvantage, as the case may be, of being a small book limited to the topics we have mentioned.

A Treatise on the Locus Standi of Petitioners against Private Bills in Parliament. By JAMES MILLER SMETHURST, Esq., of Trinity College, Cambridge, M.A., and of the Inner Temple, Barrister-at-Law. 12mo., pp. 112. [Stevens & Haynes.]

A Treatise on the Court of Referees in Parliament, containing Chapters on the Practice and Jurisdiction of that Court on the Locus Standi of Petitioners in the House of Commons, and Reports of the Cases decided in that Court during last Session. Reprinted (with additions) from "The Law Times." By JOHN HENRY FAWCETT, of the Middle Temple, Barrister-at-Law. Together with a Chapter on Engineering and Estimates, and a Digest of the Reports made by the Referees to Parliament. By R. D. M. LITTLER, of the Inner Temple, Barrister-at-Law. 8vo., pp. 144. [H. Cox.]

THE first fruit in legal literature of the establishment of the Court of Referees was Mr. Smethurst's able little work on Locus Standi. As he observes in his Preface, before the establishment of that court, committees, although they often gave great attention to questions of locus standi, did not succeed in establishing any uniformity of decision. Before one committee, a petitioner was allowed to be heard on the ground of competition; before another, a petitioner with a precisely similar case was refused a hearing. Before one committee, a locus standi was allowed to a shareholder on his petition against a bill promoted by a company, of which he was a shareholder; before another, it was refused; and the Standing Orders did little to regulate the practice, because every question not plainly within the letter of an Order, however often it arose, was debated as a case of first impression; the decisions of committees being too various, and too seldom founded on any settled principle, to admit of being reported, or referred to as precedents. But upon the establishment of the Court of Referees, these decisions were reported; and from these decisions Mr. Smethurst has endeavoured, with great ability and considerable success, to deduce general principles.

The object of his book is, in his own words, "to present a concise yet complete view of the present

practice of Parliament with respect to the locus standi of petitioners against private bills, by reviewing in different chapters relating to each branch of the subject the cases that have been decided by the referees, and also by committees of the House of Lords, and by shewing the principles of each decision." To these are added short reports of the cases, and the Standing Orders.

The work of Messrs. Fawcett and Littler is larger and more comprehensive. It treats of—1. The practice and jurisdiction of the court, and rules for practice. 2. Locus standi. 3. Engineering and estimates, with special subdivisions in respect of waterworks bills and gas bills; and in an Appendix are given—1. A digest of the reports of referees in the session of 1865; and 2. Reports of cases of locus standi, &c. decided by the referees in 1865. The work is more comprehensive than that of Mr. Smethurst; but it is not so much a treatise as a collection of materials for a treatise.

The Patentee's Manual; being a Treatise on the Law and Practice of Letters-Patent. Especially intended for the Use of Patentees and Inventors. By JAMES JOHNSON, of the Middle Temple, Barrister-at-Law, and J. HENRY JOHNSON, Assoc. Inst. C. E., Solicitor and Patent Agent. Third Edition, revised and enlarged. 8vo., pp. 406. [Longman.]

A good treatise on the law of patents, based on an intelligent and searching criticism of the decisions, and clearly deducing the principles which in the main have governed the decisions, is still to be written. Nothing of the kind has appeared since the able, but now obsolete, work of Mr. Holroyd, published thirty-six years ago. In the work before us the broad principles by which the validity of letters-patent in respect of the subject-matter and the specification is determined are set forth and illustrated with as much accuracy and clearness as can be expected in a popular and uncritical treatise. The practice with respect to obtaining letters-patent, disclaimers, confirmation, and extension, actions for infringement, and scire facias, &c., is also treated of; and there is a summary of the patent laws of foreign countries, the correctness and freshness of which we have no means of testing. Whenever a writer professes to set forth the law of his own country, it is taken for granted that he states the law as it exists at the time of publication. Few readers are so simple as to make the same assumption with respect to a statement of colonial or foreign law. No such statement should be attempted without a reference to the authorities on which it is founded, and an intimation of the date down to which the compiler's researches have been prosecuted.

On the whole, Messrs. Johnson's Treatise appears to be the best of the popular manuals of patent law which have come under our notice.

BOOKS RECEIVED.

A Treatise on the Game Laws of England and Wales, including Introduction, Statutes, explanatory Notes, Cases, and Index. By John Locke, Esq., M.P., Q. C., Recorder of Brighton. The fifth edition, in which are introduced the Game Laws of Scotland and Ireland. By Gilmore Evans, Esq., of the Inner Temple, Barrister-at-Law. 12mo., pp. 422.—H. Sweet.

The Law Magazine and Law Review; a Quarterly Journal of Jurisprudence for August, 1866, being No. 42 of the New Series.—Butterworths. [This number contains an article on Criminal Procedure by Mr. Greaves, Q. C.]

GENERAL EXAMINATION.—MICHAELMAS TERM, 1866.

The Council of Legal Education have approved of the following rules for the public examination of the students.

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Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the Inn of Court to which he belongs on or before Tuesday, the 23rd day of October next; and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction, or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

The examination will commence on Tuesday, the 30th day of October next, and will be continued on the Wednesday and Thursday following.

It will take place in the Hall of Lincoln's Inn; and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order:—

Tuesday morning, the 30th October, at ten, on Constitutional Law and Legal History; in the afternoon, at two, on Equity.

Wednesday morning, the 31st October, at ten, on Common Law; in the afternoon, at two, on the Law of Real Property, &c.

Thursday morning, the 1st November, at ten, on Jurisprudence and the Civil Law; in the afternoon, at two, a paper will be given to the students including questions bearing upon all the foregoing subjects of examination.

The oral examination will be conducted in the same

order, during the same hours, and on the same subjects, as those already marked out for the examination by printed questions, except that on Thursday afternoon there will be no oral examination.

The oral examination of each student will be conducted apart from the other students; and the character of that examination will vary, according as the student is a candidate for honours, or desires simply to obtain a certificate.

The oral examination and printed questions will be founded on the books below mentioned, regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

A student may present himself at any number of examinations until he shall have obtained a certificate.

Any student who shall obtain a certificate may present himself a second time for examination as a candidate for the studentship or exhibition, but only at the general examination immediately succeeding that at which he shall have obtained such certificate; provided, that if any student so presenting himself shall not succeed in obtaining the studentship or exhibition, his name shall not appear in the list.

Students who have kept more than eleven terms shall not be admitted to an examination for the studentship or the exhibition.

The **READER ON CONSTITUTIONAL LAW** and **LEGAL HISTORY** proposes to examine in the following subjects:—

1. The principal statutes from the time of King John to that of Queen Anne.
2. The State Trials during the Stuart period.
3. The 8th chapter of Hallam's *Middle Ages*.
4. Hallam's *Constitutional History*.
5. Broom's *Constitutional Law*.

Candidates for a pass certificate will be examined only in 1, 2, 3, and 4.

The **READER ON EQUITY** proposes to examine in the following books:—

1. Haynes's *Outlines of Equity*; Smith's *Manual of Equity Jurisprudence*; Hunter's *Elementary View of the Proceedings in a Suit in Equity*, part 1.

2. The Cases and Notes contained in the 1st volume of White & Tudor's *Leading Cases*; the Act to further amend the Law of Property and to relieve Trustees, 22 & 23 Vict. c. 35; the Act to further amend the Law of Property, 23 & 24 Vict. c. 38; the Act to give to Trustees, Mortgagees, and others, certain Powers now commonly inserted in Settlements, Mortgages, and Wills, 23 & 24 Vict. c. 145; the Act to regulate the Procedure in the High Court of Chancery and the Court of Chancery of the County Palatine of Lancaster, 25 & 26 Vict. c. 42; the Act to amend the Law relating to future Judgments, Statutes, and Recognisances, 27 & 28 Vict. c. 112; the General Orders of the Court of Chancery of the 1st February, 1861, and of the 5th February, 1861 (7 Jur., N. S., part 2, p. 58); Mitford on Pleadings in the Court of Chancery—Introduction, c. 1, ss. 1, 2; c. 1, s. 3 (the first six pages); c. 2, s. 1; c. 2, s. 2, part 1 (the first three pages); c. 2, s. 2, part 2 (the first two pages); c. 2, s. 2, part 3; c. 3.

Candidates for certificates of having passed a satisfactory examination will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for the studentship, exhibition, or honours will be examined in the books mentioned in the two classes.

The READER on the LAW of REAL PROPERTY, &c., proposes to examine in the following books and subjects:—

1. Joshua Williams on the Law of Real Property, 7th ed.
 2. Dart's Vendors and Purchasers, c. 4, 3rd ed.—As to Particulars and Conditions of Sale.
 3. The Act for the Amendment of the Law of Inheritance, 3 & 4 Will. 4, c. 106, and the Notes thereto in Shelford's Real Property Statutes, p. 448, 7th ed.
 4. Yool's Essay on Waste, c. 1.
 5. Sugden's Vendors and Purchasers, c. 12, 14th ed.
- The New Laws of Real Property as connected with Title.

Candidates for pass certificates will be examined in the subjects comprised under the heads 1, 2, and 3; candidates for the studentship, exhibition, or honours, in all the foregoing subjects.

The READER on JURISPRUDENCE, CIVIL, and INTERNATIONAL LAW, proposes to examine in the following books and subjects:—

1. Justinian's Institutes, book 2, with the Notes of Ortolan or Sandars.
 2. Mackeldei—Systema Juris Romani—Pars Specialis, lib. 1, §§ 208–327 (pp. 227–338, ed. Lips., 1847).
 3. Lord Mackenzie's Roman Law, part 2—On the Law relating to Real Rights, pp. 151–182.
 4. Code Napoléon, Art. 516–710—Des Biens et des Différentes Modifications de la Propriété.
- " Art. 2219–2281—De la Prescription.

5. Wheaton's Elements of International Law, part 1—Definition, Sources, and Subjects of International Law, pp. 1–111.

Candidates for honours will be examined in the whole of the above subjects; but candidates for a pass certificate will be examined in 1, 3, and 5 only.

The READER on COMMON LAW proposes to examine in the following books and subjects:—

Candidates for a pass certificate will be examined in—

1. The ordinary Proceedings and Course of Pleading in an Action.
2. Broom's Commentaries, 3rd ed., book 2, c. 1—Of Contracts generally. Book 3, c. 1—Of Torts generally. Book 4, c. 1—Criminal Law generally—its Elementary Principles.
3. Smith's Lectures on Contracts, last ed., §§ 1–5 inclusive, and § 8.
4. The under-mentioned cases, with the notes thereto:—

Smith's Leading Cases, last ed., vol. 2—*Ehous v. Mawe*, *Higham v. Ridgway*, *Marriot v. Hampton*, *Merryweather v. Nisam*, and *Pasley v. Freeman*.

Candidates for the studentship, exhibition, or honours will be examined in 1, 3, and 4, supra, and also in—

5. Smith's Mercantile Law, last ed., book 1, cc. 4, 5—Of Corporations and of Principal and Agent.
6. The Criminal Law Consolidation and Amendment Acts (ed. by Greaves), so far as they relate to—
 - (1). Murder and Manslaughter (24 & 25 Vict. c. 100, §§ 4, 6, 7, 9, and 10).
 - (2). Larceny, Embezzlement, and False Pretences (24 & 25 Vict. c. 96, §§ 1–2, 5, 6, 67, 68, 72, 88, and 89).
7. Taylor on Evidence, 4th ed., book 1, c. 5—Presumptive Evidence.

By order of the Council,
WESTBURY, Chairman.

Council Chamber, Lincoln's-inn,
July 12, 1866.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, July 26.

FOREIGN JURISDICTION ACT AMENDMENT BILL.

The Lord Chancellor said this was a bill introduced by the late Government. Under the Foreign Jurisdiction Act her Majesty was authorised to exercise any power of jurisdiction which she possessed in countries out of her dominions in the same way as if that jurisdiction had been acquired by cession or conquest. It was considered important to confer an appellate jurisdiction upon the High Court of Bombay in cases arising at Zanzibar and other places; but it was doubted whether that jurisdiction could be given. The late law officers of the Crown thought that the Foreign Jurisdiction Act did not give this power, and the first bill was consequently introduced. He thought they were right in this opinion, and therefore moved the second reading of the bill.

The bill was read a second time.

Friday, July 27.

AMENDMENT OF THE STANDING ORDERS.

Lord Redesdale proceeded to move a series of amendments to the Standing Orders relating to water companies. The first amendment the noble Lord moved was as follows:—In the thirteenth line of sect. 1, Standing Order 180, after the word intention, insert "And if it be intended to apply for powers to amalgamate with any other company, or to sell or lease the undertaking, or to purchase or take on lease the undertaking of any other company, or to enter into traffic arrangements, the notices shall specify the company, person, or persons with, to, from, or by whom, and the terms and conditions on which, it is intended to be proposed that such amalgamation, sale, purchase, or lease, or traffic arrangements shall be made." The noble Lord said that there was a practice among companies to take general powers without specifying what they desired to accomplish, and it was to secure due notice to the shareholders that he moved this amendment, believing that it was specially desirable that the terms of amalgamation should be made known.

The amendment was agreed to.

Lord Redesdale moved a second amendment as follows, its object being to prevent a company raising additional capital for extensions without due notice:—After the word "capital," in the fourth line of sect. 2, Standing Order 184, insert "or by an existing railway when the capital to be raised is greater than the existing authorised capital of the company."

The amendment was agreed to.

Lord Redesdale moved a third amendment, as follows:—"That a statement be inserted in a schedule to the bill after sect. 2, Standing Order 184, of the name, residences, and description of the contributors to the deposit; and also of the sums contributed by way of deposit, and paid by them respectively, amounting in the aggregate to not less than 8 per cent. of the estimated cost of the undertaking, and that no such deposit be for a less sum than 20*l*. That a clause be inserted in each bill in which, after reciting the fact of the deposit having been made and the amount paid as stated in the schedule, it shall be enacted, that as soon as it shall be proved to the satisfaction of the Board of Trade that the company has paid up one-half of their authorised share capital, and has expended that amount on their undertaking, it shall be lawful for the company to withdraw the sum deposited for the purpose of the undertaking; and thereupon they shall issue shares to the contributors and their assigns to the amount represented by their respective contributions. That the above requirements shall not apply to any incorporated company seeking power to construct new works, provided the new capital to be raised is not greater than the existing authorised capital of the company, and provided that the company is paying a dividend upon its ordinary stock. For companies so exempted, the present 50*l*. a day penalty shall be retained until the same shall amount to 8 per cent. on the estimated cost of the works, together with the interest at the rate of 5 per cent. on the balance remaining unpaid from the date of the act to the date of the final payment." The noble Lord adverted to the fact established before a committee, that many railway schemes were brought into Parliament without there being a shilling at the disposal of the promoters. Representations were being made to him constantly respecting

such proceedings; and only the other day he heard of a man who was appointed a resident engineer, and who, after working for a year, was dismissed on asking for the payment of his salary. He proceeded against the company which employed him, and compromised the action for a sum of 300*l.* or 400*l.*; but even then, there was no property that he could get at in any way to secure the payment of the sum he had consented to accept. The whole thing was a sham, and there really was no capital whatever. He believed that if those who were the real promoters of a line were required to make a deposit which could be available to satisfy such claims, the effect would be to make schemes a little more secure than they are now. He did not believe that such security could be obtained in any way other than that proposed; and at the same time he was confident that any sound project would be taken up without prejudice from the requirement of a deposit. It was quite necessary to put a little check upon practices that had brought discredit upon railway enterprise, as well as to save unsuspecting persons from embarking money in unsound concerns.

Lord Stanley of Alderley assumed that the amendment was intended to apply strictly to railway companies, and that amendments necessary to restrict its application would be assented to.

The Marquis of Clanricarde said that evidence had been given before the committee to the effect, that such an alteration in the Standing Orders as was now proposed would be a most serious impediment to the extension of railways.

After some remarks by the Earl of Belmore, Lord Stanley of Alderley, Lord Redesdale, and the Marquis of Clanricarde, their Lordships divided:—

For the amendment	13
Against	24

Majority	12
------------------	----

The paragraph was then agreed to.

Lord Redesdale, in moving the next paragraph, explained that the object of the alteration was to make it clear that only one form of proxy was to be sent out, and that the name of the person to whom it was addressed should be placed on the back with a view to identification, and in accordance with the practice now adopted in the case of all charities. The paragraph was as follows:—"That such meeting was called by advertisement inserted for two consecutive weeks in a morning newspaper published in London, Edinburgh, or Dublin, as the case may be, and in a newspaper of the county or counties in which the principal office or offices of the company is or are situate, and also by a circular addressed to each proprietor at his last known or usual address, and sent by post, or delivered at such address, not less than ten days before the holding of such meeting, inclosing a blank form of proxy, with proper instructions for the use of the same; and the same form of proxy, and the same instructions, shall be sent to every such proprietor, and shall be addressed to each proprietor on the back of the form of proxy; but no such form of proxy shall be stamped, nor shall the funds of the company be used for the stamping any proxies, nor shall any intimation be sent as to any person to whom the proxy may be given or addressed; and no other circular or form of proxy shall be sent to any proprietor from the office of the company, or by any director or officer of the company so describing himself."

The paragraph was agreed to.

Lord Redesdale said, the object of the next amended paragraph was to meet the case of proprietors of preference or other shares, who in many companies were prevented from voting at meetings, though questions affecting their interests might be under consideration. They would now be allowed to vote, but their votes would be recorded separately. The paragraph was as follows:—"That at such meeting the said bill was submitted to the proprietors then present, and was approved by proprietors, present in person or by proxy, holding at least three-fourths of the paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at all ordinary meetings of the company in right of such capital. The votes of proprietors of any paid-up shares or stock, other than debenture stock, not qualified to vote at ordinary meetings, whose interests may be affected by the said bill, if tendered at the meeting, shall be recorded separately and reported accordingly."

This paragraph was likewise agreed to.

Lord Redesdale said the next paragraph was intended to prevent companies from dealing with lines of railway at their own will and pleasure. Ordinary arrangements, such as were contemplated by the general law, they would, of course, retain power to make; but when legislative sanction was sought to any special provisions, nothing was more important than that the nature of the arrangements which the companies proposed to enter into should be disclosed on the face of the bill.

The paragraph, as follows, was agreed to without discussion:—"That when by any bill powers are applied for to amalgamate with any other company, or to sell or lease the undertaking, or to purchase or take on lease the undertaking of any other company, or to enter into traffic arrangements, the company, person, or persons, with, to, from, or by whom, and the terms and conditions on which it is proposed that such amalgamation, sale, purchase, or lease, or traffic arrangements shall be made, shall be specified in the bill."

COURTS OF JUSTICE BILL.

This bill was read a second time.

SUBURBAN COMMONS BILL.

The Earl of Belmore moved the second reading of this bill. Lord Houghton remarked that its title had been changed from the "Commons Metropolis Bill," which name it bore while in the other House. He did not wish to offer any opposition to the bill, but promised to give notice of an amendment in committee.

The bill was then read a second time.

RAILWAY TRAFFIC PROTECTION BILL.

On the order to go into committee on this bill, Lord Redesdale restated its object—to prevent the seizure of rolling stock by the creditors of a railway—and said he had introduced it that due notice might be given to those concerned of the proposal to take away part of the security of railway creditors. He classed rolling stock with other species of property and settled property which were protected from seizure, on the ground that great public inconvenience would result if railway traffic were suspended by a seizure at the instance of creditors. As he did not think there was a prospect of the measure being passed by the House of Commons this session, he moved that the order to go into committee be discharged.

The Duke of Buckingham said the bill involved a great deal of principle, because it was proposed to take away almost the only available security upon which a new company could raise the money which it was empowered by act of Parliament to borrow. It seemed to him that the making of so great a change would endanger the credit of railway companies, and would render necessary a complete revision of the law affecting them, because it would be useless to give them large borrowing powers if their property could not be accepted as security. It would be necessary to consider, in the event of the bill passing, whether such charges as rates and tithe rent should not be exempt from its operations. On these grounds he trusted that the bill would be reserved for a future session.

Lord Redesdale observed that a clause in the bill provided for such charges as rates.

The order was then discharged, and the bill withdrawn.

The Foreign Jurisdiction Act Amendment Bill passed through committee.

Monday, July 30.

ROYAL ASSENT.

The royal assent was given by commission to the following bills:—The Sheriff Court Houses (Scotland) Act Amendment, Revising Barristers' Qualifications, Postmaster-General, Pier and Harbour Orders Confirmation (No. 2), Charitable Trusts Deeds Inrolment, and thirty-five private bills.

The Thames Navigation Bill was read a second time, and referred to a select committee.

The Fees (Public Departments) Bill and the Parishes (Scotland) Act (1844) Amendment Bill were read a second time.

The Courts of Justice Bill, the New Forest Poor Relief Bill, the Rochdale Vicarage Bill, and the Straits Settlements Bill passed through committee.

THE COUNTY ASSESSMENTS BILL.

The Earl of Devon moved the second reading of this bill,

the object of which was to remove a doubt which had arisen, whether the Union Assessment Act had not taken away the power which the justices possessed under the 15 & 16 Vict. c. 81, to settle the basis of assessment for the county rate. This bill would declare that the power of the justices remained in full force.

Lord *Redesdale* thought that the doubt should have resolved in exactly the contrary sense. It was the object of the Union Assessment Act to secure one uniform basis of assessment for all rates. The present bill would create two bases, one for the poor and the other for the county rates; and believing that this was undesirable, he should move that the bill be read a second time that day three months.

The Earl of *Devon* said, that he agreed that it was desirable to have a uniform basis of assessment. But that was not gained by the Union Assessment Act, under which different unions in the same county might be assessed on different bases. Now, unless they had the same bases for the whole of a county, great injustice would be done, because different unions would contribute in unequal proportions. The only mode of preventing this, as matters now stood, was by passing this bill.

After a brief discussion the amendment was withdrawn, and the bill was read a second time.

The Courts of Justice Bill, the Inland Revenue Bill, and the Colonial Branch Mints Bill passed through committee.

The Foreign Jurisdiction Act Amendment Bill was read a third time, and passed.

Tuesday, July 31.

SUBURBAN COMMONS BILL.

On the order of the day for going into committee on this bill,

Lord *Redesdale* called attention to the fact that, as first introduced into the other House, it only related to metropolitan commons. In the select committee to which it was referred, it was made to apply to suburban commons throughout the country. Now the owners of non-metropolitan commons had had no sufficient notice that legislation affecting their property was under consideration, and under these circumstances he thought the operations of the bill should be confined to the metropolitan commons.

After a short conversation,

The Earl of *Belmore* acceded to this suggestion, and the bill thus amended passed through committee.

The Railway Companies' Securities Bill was read a second time.

The Fees Public Departments Bill passed through committee.

The County Assessments Bill passed through committee. The Courts of Justice Bill, the Inland Revenue Bill, the Colonial Branch Mints Bill, and the Oyster and Mussel Fisheries Bill were read a third time, and passed.

HOUSE OF COMMONS.—Friday, July 27.

RAILWAY COMPANIES SECURITIES BILL.

The bill, as amended, was considered.

BILLS OF SALE ACT (1854) AMENDMENT (STAMPS).

The House went into committee, and agreed to a resolution, which was ordered to be reported.

Monday, July 30.

TRAFFIC REGULATION (METROPOLIS) BILL.

In reply to a question from Mr. Alderman *Lawrence*, Mr. *Walpole* said that, considering the bill would require more attention than it could receive at the end of the session, he should feel it his duty to move the discharge of the order.

The Common Law Courts (Fees and Salaries) Bill and Bills of Sales Act (1854) Amendment Bill passed through committee.

The Cattle Diseases Prevention Act Amendment (No. 2) Bill, Ecclesiastical Commission Bill, and Prisons Bill were read the second time.

The Poor Law Amendment Bill was read a third time, and passed.

The Bankruptcy Law Amendment Bill was formally passed through committee, and the third reading fixed for this day month. The bill may, therefore, be considered as dropped.

The order of the day for the second reading of the Law of Capital Punishment Amendment Bill was discharged.

Tuesday, July 31.

The following bills were read a third time, and passed:—The Turnpike Acts Continuance, the Bills of Sale Act (1854) Amendment, the Oysters Cultivation (Ireland), the Naval Discipline, and the Dockyards Extension Bills.

The Cattle Diseases Prevention Act Amendment (No. 2) Bill passed through committee.

The Prisons Bill also passed through committee.

The Constabulary Force (Ireland) Bill and the Expiring Laws Continuance Bill were read a second time.

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NOTICE.

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THE JURIST.

LONDON, AUGUST 11, 1866.

To limit property for the benefit of a man, so as not to pass over to his assignee in case of bankruptcy, and yet to be capable of being enjoyed by him after his bankruptcy, has been regarded as an impossible feat in conveyancing. According to the cases of *Lee v. Olding* (2 Jur., N. S., part 1, p. 850) and *Re Vizard's Trusts* (1 Law Rep., Eq., 667) nothing is easier. It is only necessary to vest the property in trustees upon trust to pay the income to the object until he shall die or be adjudged bankrupt, and then upon such trusts for the benefit of the bankrupt, his wife and children, or any one or more of them, as the trustees, or even as the bankrupt and the trustees jointly may appoint, and in default of appointment, upon trust for the bankrupt absolutely. An appointment made under such a power to the bankrupt after his certificate would, according to the cases we have mentioned, be valid for his benefit to the exclusion of the assignees.

In *Lee v. Olding* a fund had been settled upon the marriage of the plaintiff's father and mother, upon trust for the mother for her life, then for the father for his life, and then for all or any of the children, in such shares, and to vest at such times, as the father and mother or the survivor should appoint, and in default of appointment, for all the children equally at twenty-one. There were two children only, the plaintiff and Mary Ann Lee. On the marriage of the latter, an appointment was made in her favour to the extent of 5000*l*. She died in 1842, after having attained her majority. In 1844 the plaintiff was adjudicated a bankrupt, and obtained his certificate. Two days after the date of the certificate, an appointment of the residue of the fund was made in his favour, subject to the life interest of the surviving parent. The assignees under the bankruptcy claimed the appointed fund, or at least a moiety of the settled fund, but Sir J. Stuart, V. C., declared that the plaintiff was entitled to the whole of the appointed fund for his own benefit. The grounds of the judgment appear to have been these:—The appointment was good in form. An assignment made by the plaintiff before the appointment of what he should take in default of appointment would have been defeated by the appointment. He might also have covenanted to assign what he should take by appointment, but the Bankrupt Act does not supply the want of such a covenant. Before the act of the 6 Geo. 4, c. 16, the benefit even of a general power vested in the bankrupt did not pass to his assignees. Contingent interests would pass to the assignees, but the assignees could not claim this as a contingent interest.

In *Re Vizard's Trusts*, the question arose upon an appointment made under the trusts of a will, giving

to the testator's widow a life interest and a power of selection among the children of A., to which children the devised fund was limited in default of appointment. In 1861 one of the children of A. made an assignment of all his estate for the benefit of his creditors in the form set forth in Schedule (D.) of the Bankruptcy Act of that year. In 1865 the widow died, having appointed by her will the fund to the children of A. in equal shares. The Vice-Chancellor followed his decision in the previous case, and declared that the appointee, and not his assignees, was entitled to the funds.

Before we make any comment on these decisions, it will be well to see what else has been enacted and decided with reference to the validity of executory trusts, as against creditors.

By the Bankruptcy Act, 1849, all the bankrupt's personal estate, present and future, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he obtains his certificate, and all lands, tenements, and hereditaments to which he is entitled, and all interest to which he is entitled in any lands, &c. of which he might have disposed, and all such lands, &c. as he shall purchase, or shall descend, be devised, revert to, or come to him before he obtains his certificate, vest in his assignees (sects. 141, 142); and all powers vested in the bankrupt, which he might legally execute for his own benefit (except a right of presentation), may be executed by the assignees. The substance of these provisions was contained in the act of 6 Geo. 4, c. 16.

In *Lord v. Bruce* (2 Y. & C. C. C. 98) freehold property was settled in trust to permit T. L. to receive the rents during his life, provided that if he should be declared bankrupt, or be discharged under any act for the relief of insolvent debtors, the trustees should, during his life, apply the rents for the maintenance of T. L., his wife and children, or any of them, in such manner as they should think proper. T. L. having obtained his discharge under an act for the relief of insolvent debtors, Sir J. L. Knight Bruce, V. C., held that the trustees might apply the rents according to their discretion, but that any benefit given to the insolvent would belong to his assignees. (*Lord v. Bunn*, 2 Y. & C. C. C. 98). See *Kearsley v. Woodcock* (3 Hare, 185; 8 Jur. 120); *Wallace v. Anderson* (16 Beav. 533); *Snowdon v. Dales* (6 Sim. 524); and *Re Coes' Trusts* (4 Kay & J. 199).

The cases of *Twopenny v. Peyton* (10 Sim. 487) and *Godden v. Crowhurst* (Id. 642) may be here noticed as anomalous decisions. In the former a testatrix, having by her will given the income of a fund to her nephew for his life, made a codicil after the nephew had become first bankrupt and then lunatic, and revoked the gift of a life interest, and directed her trustees to apply all, or so much as they should think fit, of the income for the maintenance and support of the nephew, and for no other purpose. The nephew did not obtain his certificate, but it was held that his assignees could not claim any part of the income, which was given solely for his maintenance. In *Godden v. Crowhurst* the trust was for the maintenance and support of H. S., his wife and children; and it was held, that

as this was for their benefit collectively, the assignees in bankruptcy of H. S. were not entitled to any part of the fund. The Vice-Chancellor said—"It does not follow that anything was of necessity to be paid, but the property was to be applied, and there might have been a maintenance of the son, and of the wife, and of the children, without their receiving any money at all." It is conceived that these cases are contrary to established principles, and must be regarded as unsound. (See *Rippon v. Norton*, 2 Beav. 63; *Page v. Way*, 3 Beav. 20; *Wallace v. Anderson*, 16 Beav. 533; and *Lord v. Bunn*, 2 Y. & C. C. C. 98). In *Green v. Spicer* (1 Russ. & M. 395) the income of a fund given to be applied, at the discretion of trustees, for the board, lodging, maintenance, and support and benefit of R. R., was held to pass on his insolvency to his assignees. In *Rippon v. Norton*, under a trust, after the insolvency of J. R., for the board, lodging, and subsistence of J. R. and his family, as the trustees should think proper, his assignees were held entitled to stand in his place as tenants in common with the other objects of the income during his life. In *Page v. Way* and *Wallace v. Anderson*, the wife and children were, under a similar trust, held entitled to "a proper allowance." As the trust was equally for the benefit of all, it seems that this was wrong, and that the rule in *Rippon v. Norton* should have been followed. See, however, *Kearsley v. Woodcock* (3 Hare, 185).

It is, then, abundantly established by authority, that where trustees or others have a discretionary power to apportion a fund after the bankruptcy or insolvency of A., between him and other objects, whatever interest is in the event given to A., belongs to his assignees. The anomalous exception in the cases of *Troopeny v. Peyton* and *Godden v. Crowhurst*, excluding the assignees in case the trust is exclusively for the personal support and maintenance of A., if it can be recognised, does not affect the application of the rule to other cases.

We can see no difference between the cases we have been last considering and those of *Lee v. Olding* and *Re Visard's Trusts*. In the latter, property was given to a class in such shares as X. should appoint, and in default, equally; in the former a trust was declared of the income of a fund for the benefit of a class in such proportions as trustees should think fit. In each the bankrupt or insolvent had, before the title of his assignee accrued, a contingent or executory interest in the property—an interest contingent on the will or discretion of the person in whom the power of selection was vested, being, we conceive, a future interest within the express terms and the meaning of the Bankrupt Act. An appointee is held to take under the instrument what creates the power—his title relates back to the execution or coming into operation of that instrument; and though in the case of a general power, the relation of the appointment to the creation of the power does not extend to give to all possible appointees a possibility or disposable interest before appointment, it is different where the trust or limitation is to a class in such shares as may be appointed.

ORDER OF THE COURT OF CHANCERY, July 19th, 1866.

The Right Hon. FREDERICK LORD CHELMSFORD, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Hon. JOHN LORD ROMILLY, Master of the Rolls, the Hon. Sir RICHARD TORIN KINDERSLEY, the Hon. Sir JOHN STUART, and the Hon. Sir WILLIAM PAGE WOOD, doth hereby, in pursuance and execution of the powers given by the stat. 25 & 26 Vict. c. 89, and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

At all times when the chambers of the judge to whose court the matter of the winding up of any company is attached shall be closed for any vacation, the chief clerk of the Master of the Rolls, or of any one of the Vice-Chancellors of the Court, may, notwithstanding the matter of such winding up may not be attached to the court of such judge, countersign any cheque or order, request or direction, which, under the 42nd and 43rd rules of the General Order, dated the 11th November, 1862, is required to be countersigned by the chief clerk of the judge.

CHELMSFORD, C.
ROMILLY, M. R.
RICHD. T. KINDERSLEY, V. C.
JOHN STUART, V. C.
W. P. WOOD, V. C.

CHANCERY VACATION NOTICE.

DURING the vacation, all applications to the Court of Chancery which are of an urgent nature are to be made at the chambers of the Vice-Chancellor Sir John Stuart.

All applications ex parte up to and including the 1st September, 1866, are to be sent to the Master of the Rolls by post, accompanied with the brief of counsel, indorsed with the terms of the order applied for, and a cover for book post capable of receiving the papers to be returned, with sufficient stamps affixed thereon, without address.

On applications for injunctions or writs of ne exeat regno, there must be sent, in addition to the above, a copy of the bill, a certificate of bill filed, and office copies of the affidavits in support of the application.

The papers sent to the Master of the Rolls will, when any order is made thereon, be returned direct to the registrar, accompanied with such order as the Master of the Rolls may have thought fit to make thereon.

When the Master of the Rolls declines to make any order thereon, the papers will be returned to the solicitor who sent the papers, according to the address given by him.

The Master of the Rolls' address when he leaves London can be obtained, on application at the chambers of the Vice-Chancellor Sir John Stuart, 11 and 12, Old-square, Lincoln's-inn, or at the registrar's office.

The chambers of the Vice-Chancellor Sir John Stuart will be open on Tuesday, Wednesday, Thursday, and Friday in every week, from eleven till one o'clock.

THE RIGHT TO CLOSE THE PARKS.

THE following are the case and opinion which have been so often referred to on this subject. The opinion was taken for the benefit of the unlearned public. No

one having the most elementary knowledge of law could suppose that the public had any legal right of access to those parks of which the gates are closed, either daily or at intervals not exceeding a year; and the profession by Mr. Edmund Beales of a different opinion, or of anxiety to have the question tried, is not consistent with his profession as a barrister-at-law.

"1. Is there any authority to close the gates of the inclosures, and exclude the public altogether during the day?

"2. The gates of the inclosures being open, is there any authority to prevent the ingress of persons to the inclosures, those persons conducting themselves properly and orderly in their attempt to obtain ingress?

"3. Supposing persons to have entered and to preach, or play upon musical instruments, or to sing, does any authority exist to turn persons so preaching, or playing, or singing, out of the parks, supposing they do not obstruct a thoroughfare or cause a disturbance? And, if so,

"You are particularly requested to state what is the nature of the authority, and how it is derived."

OPINION.

"1. We think that there is a right in point of law to close the gates and exclude the public from the parks.

"2. We think that the gates being open there is a right on the part of the Crown to exclude persons attempting to gain admission; but we do not think this right should be exercised against particular individuals unless in case of previous misconduct.

"3. If persons who have entered commence to preach or play they cannot be turned out without proper notice to them that the permission or license of the Crown to the public to enjoy the park is conditional only, and does not apply to persons who so conduct themselves; and the best way of giving such notice is by posting it up at the entrances of the parks.

"The authority to close and to exclude the public from the parks is that which every landowner has to prevent the public from trespassing on his lands; for we are of opinion that the public have not acquired any legal right to use the parks by reason of the continued user under the license and by favour of the Crown.

(Signed) "A. E. COCKBURN.
"RICHARD BETHELL.
"W. H. WILLES."

Imperial Parliament.

HOUSE OF LORDS.—Monday, Aug. 6.

ROYAL ASSENT.

The royal assent was given by commission to the following bills:—Crown Lands, Glebe Lands (Scotland), British Columbia, Land Tax Commissioners' Names, Militia Pay, Drainage and Improvement of Lands Act (Ireland), New South Wales and Van Diemen's Land Government, Inland Revenue, Courts of Justice, New Poor-law Relief, Public Works, Harbours, &c., Public Works Loans (Ireland), Carriage and Deposit of Dangerous Goods, National Gallery Enlargement, Pensions, Pier and Harbour Orders Confirmation, Parochial Buildings (Scotland) Act Amendment, Fees (Public Departments), Parishes (Scotland) Act (1866) Amendment, County Assessments, Ecclesiastical Leases (Isle of Man), Standards of Weights and Measures and Coinage, Dean Forest (Walmers and the Bearce Commons), Attorneys and Solicitors (Ireland) (1866), Oyster Beds Licenses (Ireland), Oyster and Mussel Fisheries, and a number of private bills.

PUBLIC HEALTH BILL.

The Duke of Buckingham moved the second reading of this bill, which he said had recently undergone a full dis-

cussion in the Lower House. Its object was to provide for more complete inspection and compulsion in matters relating to the public health.

Earl Granville said that the bill was one of the greatest importance at the present time, and he trusted that it would receive the assent of the House.

The Earl of Shaftesbury said that the bill did not go far enough, but it was a very good one so far as it went, and would strengthen the hands of the Government in a manner that was very desirable. It was singular how utterly we had ignored the teachings of experience in matters of public health. Thirty years we were threatened with the same epidemic which impended over us now, but the metropolitan water supply was now worse than it was then; nor did he believe there ever was a time when so many people were huddled together in so dangerous a state as in London at the present time. He should, next session, bring the whole subject of the water supply of the metropolis under the consideration of the House.

The Earl of Carnarvon said that an Order in Council would shortly be issued, directing that every emigrant ship leaving our ports after the 20th inst. with more than fifty passengers should carry a surgeon.

The bill was then read a second time, passed through committee, was read a third time, and passed.

The Turnpike Trusts Arrangements, the Poor Law Amendment, and the Aberdeen Provisional Order Confirmation Bills passed through committee.

The Inclosure (No. 2), the Public Libraries Act Amendment, the Turnpike Acts Continuance, the Local Government Supplemental (No. 4), the Railways (Ireland) Temporary Advances, the Bills of Sale Act (1854) Amendment, the Oysters Cultivation (Ireland), the Naval Discipline, the Dockyard Extensions, the Consolidated Fund (Appropriation), the Landed Estates Court, &c. (Ireland), the New Zealand, and the Prisons Bills passed through committee.

The Metropolitan Commons Bill was read a third time, and passed.

The Industrial Schools, the Reformatory Schools, the Common-law Courts (Fees and Salaries), and the Expiring Laws Continuance Bills passed through committee.

The report on the Cattle Diseases Prevention Act Amendment (No. 2) Bill was received and agreed to.

Tuesday, Aug. 7.

The royal assent was given by commission to the Public Health Bill.

The Cattle Diseases Prevention Act Amendment (No. 2) Bill was read a third time.

The following bills were also read a third time and passed:—Court of Session (Scotland), Turnpike Trusts Arrangements, Poor Law Amendment, Aberdeen Provisional Order Confirmation, Inclosure (No. 2), Public Libraries Act Amendment, Turnpike Acts Continuance, Local Government Supplemental, Railways (Ireland) Temporary Advances, Bills of Sale Act (1854) Amendment, Oysters Cultivation (Ireland), Naval Discipline, Dockyard Extensions, Consolidated Fund (Appropriation), Landed Estates Court, &c., New Zealand, Prisons, Industrial Schools, Reformatory Schools, Common-law Courts (Fees and Salaries), and the Expiring Laws Continuance.

THE STANDING ORDERS.

Lord Redesdale then moved the following Standing Order:—That a clause be inserted in each railway bill, in which, after the fact of the deposit having been made, and the amount paid as stated in the schedule, it shall be enacted to the effect that the depositors may receive any interest from time to time paid on any securities while so deposited, and that so soon as it shall be proved to the satisfaction of the Board of Trade that the company has paid up such a sum, as together with the deposit, amounts to one-half of their authorised share capital, and has expended that amount on their undertaking, it shall be lawful for the company to withdraw the sum deposited for the purpose of the undertaking; and thereupon they shall issue shares to the contributors and their assigns to the amount represented by their respective contributions. That the above requirements shall not apply to any incorporated railway company seeking power to construct new works, provided the new capital to be raised is not greater than the existing authorised capital of the company, and provided that the company is paying a dividend upon its ordinary stock.

For companies so exempted the present 50*l.* a day penalty shall be retained until the same shall amount to 8*l.* per cent. on the estimated cost of the works, together with interest at the rate of 5*l.* per cent. on the balance from time to time remaining unpaid from the date of the act to the date of the final payment. Also, that in Standing Order No. CLXXXIX, after the word "traffic" in line 7 there should be inserted "or until the sum received in respect of such penalty shall amount to 8*l.* per cent. on the estimated cost of the works; together with interest at the rate of 5*l.* per cent. on the balance from time to time remaining unpaid from the date of the act to the date of the final payment."

The motion was agreed to.

HOUSE OF COMMONS.—Friday, Aug. 3.

EXTRADITION TREATIES ACT AMENDMENT BILL.

Lord Stanley, in moving the second reading of this bill, made a brief explanation of its provisions. There was an impression in some quarters that the bill was intended to cloak the introduction of a larger and more comprehensive measure, and that the catalogue of offences for which men might be pursued into other countries would be so increased as to prove dangerous to the interests of public liberty. This, however, was not the case. The bill had no such object or intention. It was merely designed for the purpose of making a slight alteration in the present treaty with the view of enforcing its provisions more effectually. He had said that the principle of an extradition treaty had been admitted. If that were so, it would be absurd to render that principle nugatory in practice by refusing to amend what was merely a technical clause. The only change introduced by the present bill was to admit judicial and official documents in evidence, that was to say, warrants of arrest and copies of depositions which purported to be certified under the hand of a judge as true copies of the original deposition upon which the warrant was issued. In support of his argument the noble Lord read a passage from a letter addressed to the Earl of Clarendon by Sir Thomas Henry on the 20th April last. There were four crimes for which persons should be followed, who, having committed them, had escaped from justice, viz. murder, attempted murder, fraudulent bankruptcy, and forgery. With regard to the latter two, no fear could possibly exist in the mind of any one that a Government could make them the instrument of unjust prosecution. But with respect to the two former, it was contended that political offences could be embraced in them, and persons given up who might have simply done what many people might regard as a justifiable action. For instance, a man might from political motives attempt to assassinate a personage whom he regarded as an oppressor, and flying, might escape that justice into the hands of which many would no doubt think he should not be given up. But was it not monstrous that if a man murdered an ordinary individual on the streets of Paris he could be pursued, and if caught given up; whereas if the person he murdered happened to be one holding a high political position, the crime was to be regarded as a mere political offence, and the murderer was to be allowed to go free. Such a position was utterly untenable. The present bill would assist to remedy such an anomaly, and as it had been primarily prepared by the late Government he confidently relied upon their support.

Mr. Torrens moved as an amendment, that the bill be read a second time that day three months. He said, that the correspondence respecting the treaty which had been laid on the table by the noble Lord, the Foreign Secretary, disclosed a good deal of what the treaty meant. A despatch from the Prince de la Tour d'Auvergne to the Earl of Clarendon clearly shewed, that what the French Government wanted was not the modification of the previous act, was not an alteration in the mode of taking evidence before the criminal courts, but power to have a man given up, say in Middlesex, who had been convicted in France during his absence. That was a concession which ought not to be made. Was it to be said, that France required to establish a different practice with regard to England from that she adopted towards the United States? The French Minister had said that they obtained prisoners from the United States on a *demande d'arret* without a witness. When he heard the statement he was startled, and his first thought was, that if it were true, there was a strong case made out for the bill. He, therefore, wrote to

the American Minister in Paris, to ascertain if such were the fact. Mr. Bigelow's reply gave a crushing negative to the assertion, for it stated that no magistrate in the United States could deliver up a fugitive without a certified copy of a warrant, the deposition on which it was founded, and the production of a witness, that witness being liable to cross-examination. Mr. Bigelow also said, that the American magistrate should have such satisfactory proof that the alleged offence had been committed as would justify him in committing an American subject for trial, otherwise he would not give up the prisoner. Let this country stick to that, and he would ask no more. But that principle was entirely at right angles with the principle of this bill. The principle of this bill was to get rid of *viva voce* evidence, and to substitute a certificate of a minister of justice. It proposed to give to France, a country governed by institutions entirely different from those of this country, a right to seize accused fugitives on the production of a warrant and depositions. The difference was not of degree, but it was a difference in essence and quality. The only question to be asked of the French witness was as to the seal or the signature of the French functionary, and the identity of the accused. A *mandate d'arret* might be sent over for complicity in an attempt to murder, but who could say what there might be behind? The *acte d'accusation* was something like an English indictment; but it was more, because the depositions were digested in it, and contained a history of the prisoner's life, his words and deeds, and those of his friends and relatives. It was the brief by which the judges was to break the accused down by torture, and that was what this bill sought to do with the man who had found an asylum here. The principle of the English law was, that a man was to be presumed innocent until his guilt was proved. The avowed principle of the penal code of France was, that the accused was guilty unless he could establish his innocence. The French Government had said, that their practice had been to give up English fugitives without the production of witnesses which the English authorities required; but Lord Cowley replied to the French Minister, that if it were so, it was not because England did not send out the witnesses, but because they were not examined. It should not be forgotten, that France did send witnesses to America, although they objected to send them to England. M. Louis Blanc had written to him to say that the bill was of a dangerous and mischievous character, and that if it were passed, the right of asylum in England would become a snare.

Sir R. P. Collier said, that, as he and his late colleague (Sir R. Palmer) might be considered responsible for the introduction of the bill, he trusted the House would allow him to make a few remarks in explanation of its principle. The bill did not alter the existing law with respect to the character of the extradition treaty. His hon. friend said it was intended by the present Government to alter the character of the law by introducing some future measure for that purpose; but it would be sufficient time to deal with any further measure when it came before them. The only change made by the bill was, that it authorised the magistrates in this country to act upon copies of the depositions signed and sealed by the French judge before whom the depositions were taken. The hon. member objected to this as being contrary to English law, and an innovation never before attempted. On the contrary, the principle had been embodied in a general statute, by which copies of affidavits and other legal documents were admissible in the English courts if they were duly signed and sealed. The simple question, therefore, was, whether they believed that the judges in the French courts were likely to send to England spurious and fraudulent documents under their signature and seal. If so, the sooner they ceased to have any communication with such persons the better; let the whole convention be brought to an end, and let them have no treaty at all with France. Agreeing as to the sacredness of the right of asylum, he denied that the bill trenchanted upon that right, or that it was open to the objections which had been urged against it. No political offender had ever been demanded under the treaty.

Sir F. Goldsmid, while admitting the advantage of a treaty of extradition, urged that it might be purchased at too dear a price; and no one would deny but that the advantage would be too dear if it imperilled the right of asylum, on which we so justly prided ourselves. He denied that the difference made in the law by the bill was immaterial, and he held that

it should not be passed, except on the distinct understanding that political offences should be excluded from it.

The Attorney-General explained that the bill was based upon the principle that no demand should be made by the French Government for delivering up any one who was merely accused of a political offence. No such object was contemplated. What the bill proposed was merely to effect a slight change in the present treaty, so as to allow warrants and depositions to be received in evidence upon being attested by the signature of the judge of the district where the warrant was issued. As the case at present stood, such documents were only accepted in evidence when they were certified upon oath as correct by the judge before witnesses sent over for this purpose. This state of the law, besides being objectionable from its inconvenience, laid the Government of this country open to the imputation of believing that a French judge would wilfully and knowingly certify depositions and warrants to be true copies which he knew to be false. All that was sought by the present bill was to put England upon the same footing in this matter with regard to foreign countries as the United States had put herself on with respect to France. If objections were entertained to the principle of extradition, the objection should be raised on the broad question, and not on the minute subject of procedure as involved in the measure before the House.

Mr. J. S. Mill observed, that he was not going to say anything against the French Government, but he thought it was not improper that he should say something about the French law, and particularly that part of it which related to its criminal procedure. There were many things in the French judicial institutions which were worthy of great praise, and from which we had a great deal to learn; but he had never met with an enlightened Frenchman who was not of opinion, that the most defective of all French judicial institutions was their system of criminal procedure, and the most defective part of that procedure, its mode of taking evidence. The depositions which were taken preparatory to a criminal trial in France were taken in court. There was no opportunity for cross-examination; and it was impossible, therefore, that depositions taken under such circumstances could offer the guarantee for justice which depositions taken in England, on which a magistrate could commit a man for trial, provided. It was the easiest thing in the world to get up a false charge against a man in France. Such a state of things was quite consistent with confidence in the sense of right, and justice, and dignity of the French judges, who, when the trial came on, were able to correct the defect in the mode of procedure; but when we were called on to surrender an accused upon such depositions only, there was great danger that our magistrates would attach to them the same weight which English depositions deserved. It would be, therefore, desirable, if they were to have this power, that something should be done to warn our magistrates as to the manner in which they should exercise it. But he feared that if they did that, the effect desired would not be produced. He was afraid that, inasmuch as the evidence produced would be still written depositions, taken without cross-examination, English magistrates would not consider them trustworthy; and, therefore, if the French Government continued to stand upon the point of honour, the act would be as much a dead letter as the old one. And if that would be the fact, there was no use in passing the bill.

Sir R. Palmer said, that if the treaty was right in itself, it ought to be observed, and there ought to be life in it on one side as well as on the other. We had enjoyed in regard to France the very thing which this bill would give to France. We had never sent there depositions verified in any other way than that in which those depositions would be verified here. Although there might be a difference of mode between our law and that of France, as to the mode of taking evidence, yet for this particular purpose the nature of the case precluded the possibility of there being anything materially different; because the country which demanded extradition had not the criminal within its territory. It was impossible, therefore, that the preliminary depositions, whether taken in England or in France, could be made in the country which made the demand, in the presence of the prisoner, so that he could have any benefit from cross-examination. They must necessarily be ex parte depositions. The question really resolved itself into two points; should we take advantage of a defect in a matter of form to get rid of the treaty?

Mr. Henley said the bill was to remedy what appeared to be an inconvenience, and he thought it was decidedly calculated to frustrate, instead of to favour, what was called foul play.

Sir G. Bowyer briefly supported the bill; after which, Mr. P. A. Taylor asked the noble Lord whether he would be willing to introduce a clause in committee to prevent the possibility of mistaking political for criminal offences.

Lord Stanley said he would have every desire to consider any workable clause having that object in view. All he could say on the part of the Government was, that if they saw their way to frame such a clause, they would do so.

The committee then divided—

For the amendment	14
Against it	77

Majority	63
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The bill was then read a second time.

Monday, Aug. 6.

CAPITAL PUNISHMENT.

Mr. Ewart gave notice, that next session he would move for leave to bring in a bill to abolish the punishment of death, or, failing that, the repeal of the punishment of death as regards women.

THE METRIC SYSTEM OF WEIGHTS AND MEASURES.

Mr. Ewart also gave notice of his intention to move for the reappointment of the select committee to facilitate the introduction of the metric system of weights and measures.

LIMITED LIABILITY.

Mr. Watkin gave notice, that next session he would move for the appointment of a committee to investigate the operation of the act known as the Limited Liability Act.

THE COMMON LAW COURTS.

Mr. Laird, in the absence of Mr. Graves, asked the Attorney-General whether it was the intention of the Government to increase the number of judges, and to rearrange the jurisdiction of the Courts.

Sir H. Cairns said that he was authorised by the Lord Chancellor to state that he would give his best attention to the subject, with the view of mitigating the evils which were now so generally experienced.

EXTRADITION ACT AMENDMENT BILL.

The House went into committee on this bill, and clauses 1 and 2 were agreed to.

Sir F. Goldsmid moved an amendment in the form of a new clause. "Nothing in this act, nor in any previous act relating to treaties of extradition, shall be construed to authorise the extradition of any person in whose case there shall be reasonable grounds for belief that his offence, if any, had for its motive or purpose the promotion or prevention of any political object, nor to authorise the extradition of any person the requisition for the delivery of whom shall not contain an undertaking on the part of the Sovereign or Government making such requisition, that such person shall not be proceeded against or punished on account of any offence which he shall have committed before he shall be delivered up, other than the offence specified in the requisition." It was said that he ought not to choose that time to bring forward an important amendment on the Extradition Acts, because the bill before the House only proposed to rid the operation of those acts of a mere technical difficulty. His answer to that was, that the present bill gave validity to what had hitherto been a dead letter, and therefore it was right to take advantage of the opportunity to suggest what appeared to be the safeguards of the law with regard to those treaties of extradition. This clause was both workable and proper. The general impression on the public mind was, that existing extradition treaties did not justify delivering up political offenders. But the acts contained no such stipulation. It was true that they applied only to certain specific offences, two of which could not often be mixed up with matters of politics. But with respect to two other offences, that was by no means the case. The treaties contained no stipulation whatever, that when those two crimes were also political offences, the offender should not be delivered up. The second part of the amendment was intended to prevent any foreign Government from trying a person for a political offence who had not been delivered up on such a charge.

Mr. *Newdegate* thought there could be no objection to the first part of the proposed clause, but the second portion would have the effect of throwing upon the courts of this country the responsibility of deciding what was and what was not a political offence.

Mr. *Neate* hoped the noble Lord, the Foreign Secretary, would not for a moment entertain the proposal of the hon. baronet for altering the law of extradition as embodied in the bill. He insisted that a broad distinction should be made between insurrection and assassination, and the mode of punishing them. There should be no right of asylum to the assassin.

Lord *Stanley* said—If the amendment of the hon. baronet were agreed to, they would be met with the difficulty of defining what really was a political offence, and a solution to it would not easily be found.

Mr. *Mill* was sorry that the bill did not contain some clause similar to the one submitted by the hon. baronet the member for Reading. The subject required much more mature consideration than the advanced period of the session would permit them to give to it. The more the extradition question was looked into, the worse it appeared. There were many points in the law as it at present stood on which sufficient stress had not been laid. For instance, great uncertainty existed as to the nature of the inquiry which an English magistrate required to make previous to delivering up any person charged with one of the crimes mentioned in the treaty, and there was urgent necessity for getting rid of such a discrepancy. Moreover, he contended that the act was by no means explicit enough with regard to the extradition of political offenders. He held, that the law should clearly lay down whether any demand was likely at any time to be made to the Government of this country for the giving up of men who had committed political offences. As the matter at present stood, there seemed to be only an understanding that the French Government would not require the extradition of such persons. Even, however, should this understanding be rigidly acted upon by the present Emperor, there was no security that his successors would do so; and for this reason, words expressly enacting that the extradition of such persons should not be required, should be inserted into the bill. As a new state of things was about to present itself—that was to say, as for the first time the act was about to be enforced by the French Government, would it not be worth while to limit its duration to twelve months, in order that they might see whether any difference would be made in the nature of the demands made upon them?

The *Attorney-General* reminded the committee that already the treaty with France was determinable on six months' notice, while that with America was determinable without notice, and he believed the same was true with respect to the Danish treaty. The hon. member for Westminster had asked why should not foreign murderers be tried in that country, but no one could be so tried in this country except for an offence against the Sovereign of these realms. Now, with respect to the amendment of the hon. baronet, it was perfectly clear that it amounted to a modification of the bargain already entered into with various powers—a bargain which Parliament had ratified. In other words, behind the backs of these powers, it was proposed they should break the contract entered into with them. Unless a question of murder or assassination was involved, there need be no further reference to the matter. But now, supposing that the assassin of President Lincoln had escaped to this country, ought the British Government, merely because some political motive might be said to have influenced the assassination, to have refused to deliver up the assassin? Or, again, supposing some police sergeant or informer assassinated in the course of the Fenian conspiracy, and that the murderer escaped to France, was the French Government to refuse to deliver the offender up because of the political motive influencing the deed. Much had been said as to the provisions of the French law, and the nature of French proceedings; but it should be remembered they had really nothing to do with the matter. The evidence before the English magistrate must be precisely the same as if the accused was a British subject, and as if the crime had been committed in England.

Sir *G. Bowyer* complained that throughout the discussion the fundamental principle of the law of nations had not been sufficiently considered. The hon. member argued that murders and assassinations for political reasons were crimes for

which extradition ought to be granted, because they were offences against human society and civilisation. If we did not give up such offenders, we made ourselves accomplices in their crimes.

Mr. *Ayrton* also opposed the clause.

Mr. *Kinglake* expressed the opinion that acceding to the suggestion of the hon. member for Westminster would best express the general opinion of the committee. Under those circumstances, he would move that the duration of the act should be limited to the 1st September, 1867.

Lord *Stanley* said he could not accede to the first clause proposed; but as the proposition of the hon. gentleman who had last spoken was merely to give time for a more deliberate consideration of the subject than could be had now, he would accept the proposed clause.

Sir *F. Goldamid* withdrew his clause, and the clause of Mr. *Kinglake*'s was then agreed to and added to the bill.

Mr. *M. Torrens* moved a proviso that no certificates of extradition should be granted by a Secretary of State unless the whole of the depositions in the case were produced and laid before him.

The motion was negatived, and the bill passed through committee.

On the motion of Lord *Stanley*, the standing order was suspended, and the bill was read a third time, and passed.

The Lords' amendments to the Local Government Supplemental (No. 3) Bill and to the Railway Companies Securities Bill, were considered, and agreed to.

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NOTICE.

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THE JURIST.

LONDON, AUGUST 18, 1866.

THE case of *Reg. v. Charles Fletcher* (12 Jur., N. S., part 1, p. 506), which came before the Court for the Consideration of Crown Cases Reserved, was tried before Mr. Justice Keating at the last assizes at Warwick, when the prisoner was convicted of rape upon a girl who was an idiot, with one side and foot paralysed. There was no evidence as to the circumstances under which the connexion took place. The fact, however, was admitted. The defence was, that the girl had consented to the intercourse, and that it had previously taken place. In answer to the prisoner's question, whether the prosecutrix knew him, she replied, "Yes, the man at Richards's." The medical evidence proved that her condition was consistent with previous intercourse. The prisoner was convicted, and the learned judge reserved the question whether he ought to have left it to the jury, as there was no evidence except the fact of connexion, and the imbecile state of the girl's mind. The Court quashed the conviction.

Cases of rape upon insane and idiotic women present great difficulties. They depend so much upon a correct definition of idiocy, and of the crime of rape. Is the legal definition of rape accurate?

Rape is defined to be the carnal knowledge of a woman by force, and against her will (1 East's P. C. 434; 4 Bl. Com. 210; 1 Hawk. P. C. 397). In *Reg. v. Richard Fletcher* (28 L. J., M. C., 85), Lord Campbell said, "To constitute rape it is not necessary that the connexion with the woman should be against her will; it is sufficient if it be without her consent." And Mr. Justice Willes said, in that case, that at the Old Bailey he told a jury that a consent produced by mere animal instinct would be sufficient to prevent the act from constituting rape. The statute providing for its punishment in the State of Michigan, in America, adheres to the common-law definition. It provides, that if any person shall ravish and carnally know any female of the age of ten years or more by force and against her will, he shall be punished, &c.

The Indian Penal Code, which is considered a masterpiece of legislation, declares that a man commits a rape who has sexual intercourse with a woman—first, against her will; secondly, without her consent; thirdly, with her consent, where her consent has been obtained by putting her in fear of death or of hurt; fourthly, with her consent, where the man knows that he is not her husband, and that her consent is given because she believes him to be her husband; and, fifthly, with or without consent where under ten years of age. This is in accordance with Lord Campbell's definition in *Reg. v. Richard Fletcher*. We may now take rape to be the ravishing of a woman against her will or without her consent. It remains to be seen whether there is any real distinction between these two forms of expression.

There are some who doubt whether there is any real distinction between them; and in support of their view

they trace the history of rape from the common law, by which it was a capital offence. The crime was reduced to a misdemeanour by the Statute of Westminster 1 (Edw. 1, c. 13), which made it punishable by fine and imprisonment. It was again made felony by the Statute of Westminster 2 (13 Edw. 3, c. 34), and they contend, that as the latter statute does not alter the offence, so the Statute of Westminster 1, c. 13, must be looked to for the definition therein contained. The statute provides, that the King prohibiteth that none do ravish or take away by force any maiden within age, neither by her consent nor without her consent, nor any wife or maiden of full age, nor any other woman, against her will. There is in the Norman French no such change of expression as "without her consent" to "against her will;" and the precedents of indictments have always contained the words "against her will," which shews the construction placed upon the statute; and it is argued that it was too hastily assumed, that the expression "against her will," used in indictments, differed from the expression, "without her consent," used in the Statute of Westminster 2, c. 34, and therefore it is doubtful whether *Reg. v. Richard Fletcher*, presently referred to, is a true exposition of the law. At all events, it is a most inconvenient one. It is a much safer definition of rape which requires evidence of an active expression of dissent.

If we interpret the words "against the will, or without the consent" to mean an active expression of the will, then there may be many cases where serious crimes may be perpetrated which will not amount to rape. Or if we are to interpret them to mean an active resistance, then there may be natural causes not the result of any act by the criminal which may prevent the exercise of such resistance. Does mental incapacity to consent dispense with the necessity of giving evidence of active expression of the will, or active resistance?

Is there any real ground of distinction between the cases of *Reg. v. Richard Fletcher* and *Reg. v. Charles Fletcher*, and which heads this paper? In the former case the prisoner was indicted before Hill, J., for a rape upon Jane Jones, who it appeared was thirteen years old, but of such weak intellect as to be incapable of discriminating between right and wrong, and of distinguishing the house in which she lived from those of her neighbours. The act was witnessed, but no resistance appeared to have been offered. The judge put some questions to the prosecutrix on entering the witness box, and was satisfied that she was not of sufficient intelligence to be sworn. The prisoner was found guilty, but the jury stated that she was incapable of giving consent from defect of understanding. The conviction was affirmed by the Court for the Consideration of Crown Cases Reserved.

The facts of these two cases resemble each other very much. In each there was sexual intercourse; in each there was an absence of evidence of active resistance; in each the female was regarded as an idiot; in each the defence was consent on the part of the woman. The inference is, that they should be decided

in the same way, unless, indeed, there is same distinction to be drawn from the degree of idiocy exhibited in the two cases. The mind of one was, no doubt, a perfect blank; the mind of the other shewed the capability of impression, and she was able to answer intelligibly the question put to her by the prisoner as to her knowledge of him. She identified the prisoner, and the person in whose service he lived. Was she, then, an idiot in the legal sense of that term?

These cases shew that there are degrees of idiocy, and that where there is a gleam of intelligence, consent may be presumed if active resistance is not established.

This leads one into a metaphysical inquiry as to the constitution of the human mind. There is no doubt that man has two faculties—the understanding and the will. The understanding represents that portion of the mind which is more particularly the seat of intelligence, or, the intellect, and the will represents that portion of the mind which is the seat of the affections, or, as we commonly express it, the heart. The one is masculine in its character, the other is feminine. When the two are united we have a rational being, the degree of union creating the degree of rationality. It is for this reason that God is said to have made *them* male and female at the beginning, and the union of the intellect with the affections is the marriage which is said to be inviolable. When this marriage has not taken place, the understanding may be a blank, whilst the will may be active, and vice versa; and upon this principle all crimes may be accounted for. When man is enjoined not to separate what God has joined together, it implies that man has the power of doing that which is forbidden, viz. separating the will from the intellect. How this is effected it would be foreign to our present object to stop to inquire. All we are careful to establish is the fact of its existence.

The absence of intellect is what constitutes idiocy and this state is not inconsistent with a strong will. Children illustrate this daily. Their intellects are not expanded, and yet we find them doing wicked things, because the will predominates over the unexpanded intellect, and they have not the power of discerning between right and wrong. Mr. Justice Patteson says, in the case of *Reg. v. Cockburn* (3 Cox's C. C. 543), "My experience has shewn me that children of very tender age may have very vicious propensities."

The passions of an idiot may be strong; the deprivation of intellect does not destroy her animal propensities. It is notorious that male idiots have a strong desire for the sex, and why should not female idiots have their desire also for the opposite sex. The animal instincts have a logic of their own entirely distinct from the intellectual powers, although the intellectual powers have a countervailing influence over the animal; when the latter are deficient the former may be proportionately strong. The law has properly drawn the distinction. Consent has reference to the intellect; will has reference to the animal instincts.

This leads us to inquire what is the legal definition of idiocy, and if an idiot is incapable of consenting to sexual intercourse.

In *The People v. Cornwall* (5 Amer. Law Reg. 344, Michigan), Mr. Justice Cooley, in a most able judgment in a case where the question was, whether an insane woman could consent to sexual intercourse so as to destroy its criminal character, after defining "idiot," "insane," and "fool," said, "All these definitions imply either a weakness or perversion of the mind or its power, not their destruction. Hence an idiot cannot be said to have no will, but a will weakened or impaired—a will acting, but not in conformity with these rules, and motives, and views which control the actions of persons of sound mind. Indeed, in an insane person the will is too often fearfully active, and entire uncontrolled by reason or persuasion. There is here no lack of will, but a perversion of it; nor is this the most conclusive answer to the argument. If there is no will, how are voluntary actions continued? Actions like respiration are instinctive, and independent of the will; but eating and drinking, and numerous other acts which necessarily imply the exercise of the will, are performed by idiots and insane persons, and their exercise demonstrates the existence of a will that can assent to, and dissent from, what are clearly voluntary acts. I have, therefore, no hesitation in holding that both idiots and insane persons are possessed of a will, so that it may be legally and metaphysically said that a carnal knowledge may be had of their persons forcibly and against their will." From the brief note of the Scotch case of *M'Namara* (Arkley, 521), in 2 Bish. Cr. L., § 939, note, the Court told the jury, that if they believed that the prisoner had actually penetrated her, and that she had shewn any physical resistance to however small an extent, the offence would be complete, in consequence of her inability to give a mental consent. These cases (cited) clearly imply that the same circumstances must exist to constitute rape in the case of an idiot or insane woman, as when the woman is of sound mind. The word "will," when employed in defining the crime of rape, is not construed as implying the faculty of mind by which an intelligent choice is made between objects, but rather as synonymous with inclination or desire; and in that sense it is used with propriety to persons of unsound mind.

In one of the cases, *Richard Fletcher* or *Charles Fletcher*, the term "idiot" cannot have been accurately used. A gleam of intelligence will make all the difference between a female who is capable and one who is incapable of consenting. Such a person is of weak intellect, but not an idiot.

The deduction to be drawn from the case of *Charles Fletcher* is, that in such a case a girl is capable of giving her consent, and as there was no evidence that it was against her will, there was no case for the jury. It is only on the ground that these are degrees of idiocy that the two cases can be considered law. We cannot assume that complete idiocy existed in both cases. We must take it, therefore, that this is the distinction in the two cases. But it is said that this is too subtle a distinction upon which to hang so serious a crime.

In the earlier case, Lord Campbell, in delivering judgment, said the question is, what is the real definition of the crime of rape? Whether it is a ravishing

a woman against her will, or without her consent? If the former is the correct definition, the crime is not in this case proved; if the latter, it is proved. In that case her incapacity to give consent was the only evidence that the act was done without her consent, and the conviction was affirmed. In the latter case the idiotic state of the girl was the only evidence that the act was done against her will; and it was held that there was no evidence for the jury.

A distinction must exist in the two forms of expression. "Will" is synonymous with inclination or desire, "against the will" implies active resistance, shewing unwillingness. Mr. Justice Cooley (*supra*) says, "We are aware of no adjudged case that would justify us in construing the words 'against the will,' as equivalent in meaning with 'without her intelligent assent;' nor do we think that sound reason will sanction it." Without her consent then, requires an exercise of the intellect.

A girl may shew active resistance for a long time, and yet the act may be committed under such circumstances of passive resistance or apparent willingness as would lead to the inference that the woman consented. The cases referred to are distinguishable. In the one she had the discriminating intelligence to enable her to consent, and there was no active resistance shewn. In the other she had not that intelligence; and the Court held that she could not be supposed to give that which she had not the power of giving, and they assumed that the necessary consent was wanting, and so the offence was committed without her consent.

The earlier case was decided upon the authority of *Camplin's case* (1 Den. C. C. 89), which was acted on in *Ryan's case* (2 Cox's C. C. 115), and the words of the Statute of Westminster 2, c. 34, which defines the crime to be, where a man doth ravish a woman married, maid, or other, where she did not consent, neither before or after. *Camplin's case* was one where the possession of the person of a girl thirteen years of age was obtained by fraud or trick. She was made drunk by the prisoner, and whilst insensible he took advantage of her, and ravished her; and ten judges against three upheld the conviction. Alderson, B., puts the case upon the ground of fraud. He says, that resistance was rendered impossible by the liquor which the prisoner had administered, and he compared it to a case put by Patteson, J., where a man knocks a woman down and makes her insensible, and has connexion with her while in that state; and on the same ground it may be likened to the case of a man who watches a woman's husband leaving his home in the morning, and immediately after creeps into the wife's bed, and has intercourse with her, she assenting under the belief that he was her husband. The presumed consent in all these cases was obtained by fraud or trick—not being what the law implies by consent—the doctrine of actual resistance could not form an ingredient in the case.

It is clear that it was upon this ground that *Camplin's case* was decided; for the reasons furnished by Parke, B., upon which the ten judges agreed were, that "when the prosecutrix was made insensible by the act of the prisoner, and that an unlawful act, and

when also the prisoner might have known that the act was against her consent at the last moment that she was capable of exercising her will, because he has attempted to procure her consent and failed, the offence of rape was committed."

In *Ryan's case* the prosecutrix was an idiot, but her father stated that her general habits were those of decency and propriety. Platt, B., in summing up, said, the question is, did the connexion take place with her consent, and he left it to the jury to say whether she was likely to consent from the inference they might draw from her mental imbecility, coupled with the evidence as to her general habits, and he told them that they might infer that she did consent if her habits had been loose and indecent, but that here the presumption was that the girl did not consent.

Do these cases support the decision in *Richard Fletcher's case*? There the girl was held incapable of consenting from defect of understanding. In *Camplin's case* the girl was, equally by reason of defect of understanding, or rather in consequence of insensibility produced by the prisoner; and in *Ryan's case* the jury were evidently of opinion that the girl's imbecility raised a presumption that she did not consent, although it is true that there was evidence of want of consent, independently of her mental incapacity.

Now, while it is necessary to protect a woman who is an idiot or insane person against men who would take advantage of their diseased minds to commit a crime of this kind, it is equally necessary to take care that a man who is ignorant of her state of mind, but who has been led to the commission of the act by her importunity, should not suffer punishment; and if the doctrines established in the two cases of *Fletcher's* be carefully attended to, these results could not be brought about. It is reasonable to hold, that where there is no mind—where the mind is an absolute blank—that the act was done "without her consent;" that, in fact, such a person cannot consent.

If "against her will" is not equivalent in meaning with "without her consent," though the definition of the offence implies the existence of a will in the woman which has opposed the carnal knowledge, no violence is done to the law by holding in any case where the woman, from absence of mental action, does not willingly acquiesce, that the physical force necessary to effectuate the purpose, however slight, is against her will. As Baron Alderson in *Camplin's case* said, a woman may be supposed to have a general will not to be ravished, and the man is not to be excused, because she was prevented, or was unable to exercise it in the particular case. If, then, a man knowing a woman to be insane, should take advantage of that fact to have knowledge of her person, when her mental powers were so impaired that she was unconscious of the nature of the act, or was not a willing participator, there should be no difficulty in holding the act to be a rape, notwithstanding distinct proof of opposition might be wanting.

S. G. G.

Correspondence.

TWOPENY v. PEYTON.

TO THE EDITOR OF "THE JURIST."

SIR,—Allow me to send you, though it is of no importance, the following information respecting the case of *Twopeny v. Peyton* (10 Sim. 487), in which I was one of the plaintiffs. The late Mr. Jacob, of whose knowledge and talent there could be no doubt, gave an opinion, that the assignees of the bankrupt were not entitled to the income of the fund during his life. I was not satisfied as to the correctness of this opinion, and in conference with Mr. Jacob I asked him who, if the income should be more than sufficient for the maintenance of the bankrupt, would be entitled to the accumulations. His answer was, "I admit there you pinch me."

The opinion of Mr. Pemberton, now Lord Kingsdown, was taken afterwards. He advised, that the trustees could not act without the sanction of the Court; and hence the suit was instituted, in which the decision, certainly an unsound one, was made.

Your obedient servant,

WM. TWOPENY.

Temple, Aug. 11, 1866.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Extracts from the Blue Book).

PART I.—POLICE—CRIMINAL PROCEEDINGS—PRISONS.

Police and Constabulary.

THE Returns made to the Secretary of State, pursuant to the act of the 19 & 20 Vict. c. 69, shew the numbers of the police and constabulary forces in England and Wales to have been as follows, in the year ended the 29th September, 1865:—

Commissioners and assistant commissioners	4
Chief constables of counties	56
Head constables of boroughs	136
Superintendents	501
Inspectors	781
Sergeants	2,351
Constables	18,985
Additional constables (appointed for special purposes)	278
Detective officers	178
Total police and constabulary	23,250

The total number proves an increase of 401, or 1·7 per cent., upon the total for 1863-64.

The following are the numbers composing the different forces:—

Constables of boroughs appointed under the Municipal Corporation Act of 1835	6,802
County constables appointed under the Constabulary Acts of 1839 and 1840	8,492
Metropolitan police constables appointed under the Police Act of 1829	6,784
Her Majesty's dockyard, &c. police (including the military stations)	723
Constables for the city of London appointed under the City Local Act of 1839	649
Total police and constabulary	23,250

The numbers of the different police forces for the year 1864-5 in proportion to the population of their

respective districts, were, as calculated on the census of 1861—Borough constables, one to 787; county constables, one to 1371; metropolitan police, one to 457; city of London police, one to 172; total police to total population, one to 863; or, in proportion to the estimated population for 1865, one to 902.

In Ireland, according to the judicial statistics of that country for 1864, the proportions were one to 297 in the metropolitan district; one to 431 in the rest of Ireland; one to 420 of the total number of police to the total population.

The cost of the police for the year, as shewn in the table under the following headings, were—

Salaries and pay	£1,323,077 17 4
Allowances and contingent expenses	38,293 11 1
Clothing and accoutrements	137,491 14 11
Superannuations and gratuities	43,146 17 10
Horses, harness, forage, &c.	35,324 1 0
Station-house charges, printing, stationery, &c.	139,404 9 9
Other miscellaneous charges	32,019 7 7
Total costs	£1,748,757 19 6

In the total costs, as shewn above, there is an increase of 48,545*l.* 0*s.* 6*d.* as compared with the amount for the preceding year.

The average per man for the total number of the police and constabulary in 1864-5, as shewn above, and in each of the six preceding years, was as follows, as calculated upon the—

	Total Costs.	Salaries and Pay.	Clothing and Accoutrements.
1865.....	£75 4 3	£56 18 1	£5 18 3
1864.....	74 9 11	55 10 6	5 1 0
1863.....	73 6 0	55 4 6	5 16 8
1862.....	72 1 3	54 9 7	5 2 10
1861.....	73 16 0	65 0 11	5 8 3
1860.....	73 15 0	53 19 9	5 15 10
1859.....	72 2 0	58 13 0	5 1 0

The costs of each of the distinct forces for the year ended the 29th September, 1865, and the amounts contributed from the public revenue for each force, were as follows:—

	Total Charge.	Contributed from Public Revenue.
	£ s. d.	£ s. d.
Borough police	437,109 6 9	91,191 13 1
County constabulary	651,883 14 4	129,151 4 4
Metropolitan police	554,414 11 7	156,434 18 6
Her Majesty's dockyards police, including military stations	49,877 2 6	49,877 2 6
City of London police	55,473 4 4	—
Total	£1,748,757 19 6	426,654 18 5

The numbers of the criminal classes at large, so far as known to the police, are given in the tables for 1864-5 under the same classification as in preceding years, the total number shewing a decrease of 173, as compared with the number for 1863-4.

With regard to the class of known thieves and depredators, the rule excluding from the returns those who, although they may have been at some time convicted of offences, are known to have been subsequently living honestly for a year at least, continues to be followed, and the number under this head for 1864-5 is less than the number for the preceding year by 525, or 2·2 per cent., and less than the average of the three years (1858-9-60) preceding the change made in the returns with respect to those classed under this head, by 16,449, or 42 per cent.

The following are the numbers of the whole of these classes for each of the years 1864-5 and 1863-4, with the average of the three years 1858-9-60:—

Classes.	1865.			1864.			AVERAGE. 1858-1859-1860.		
	Males.	Females.	TOTAL.	Males.	Females.	TOTAL.	Males.	Females.	TOTAL.
Known Thieves and Depredators:									
Under 16 years of age . . .	2,755	961	3,696	2,765	955	3,720	4,454	1,541	5,995
16 years and above . . .	14,622	4,465	19,087	14,885	4,693	19,578	26,319	7,008	33,227
Receivers of Stolen Goods:									
Under 16 years of age . . .	38	19	57	36	16	52	84	27	111
16 years and above . . .	2,353	614	2,967	2,524	612	3,136	3,460	827	4,287
Prostitutes:									
Under 16 years of age . . .	—	1,335	1,335	—	1,292	1,292	—	1,852	1,852
16 years and above . . .	—	26,213	26,213	—	26,802	26,802	—	26,261	26,261
Suspected Persons:									
Under 16 years of age . . .	2,726	1,018	3,744	2,685	991	3,676	3,754	1,337	5,091
16 years and above . . .	21,266	4,561	25,847	21,879	4,682	26,561	26,657	5,624	32,281
Vagrants and Tramps:									
Under 16 years of age . . .	3,635	2,802	6,437	3,687	3,019	6,706	3,170	2,071	5,241
16 years and above . . .	18,748	8,505	27,253	17,361	7,865	25,226	11,613	5,984	17,597
Total:									
Under 16 years of age . . .	9,154	6,105	15,259	9,173	6,273	15,446	11,403	6,847	18,250
16 years and above . . .	57,009	44,358	101,367	56,649	44,654	101,303	67,949	47,703	115,652

The following are the numbers of the criminal classes, as shewn in the returns for 1865, and their proportion to the population according to the census of 1861, in the metropolitan police district with the city of London, and in the different groups of towns which have been classed together for comparison in former years:—

	Criminal Classes.	Prostitutes separately.
1. <i>The Metropolis.</i> —Including average radius of fifteen miles round Charing Cross, and comprising the district of the metropolitan police and the city of London police . . .	17,094, or 1 in 188·8	5,911, or 1 in 544·2
2. <i>Pleasure Towns.</i> —Brighton, Bath, Dover, Leamington, Gravesend, Scarborough, and Ramsgate . . .	2,743, or 1 in 81·1	913, or 1 in 243·7
3. <i>Towns depending upon Agricultural Districts.</i> —Ipswich, Exeter, Reading, Shrewsbury, Lincoln, Winchester, Hereford, and Bridgwater . . .	1,316, or 1 in 118·9	505, or 1 in 309·9
4. <i>Commercial Ports.</i> —Liverpool, Bristol, Newcastle-on-Tyne, Kingston-on-Hull, Sunderland, Southampton, Swansea, Yarmouth, Tynemouth, and South Shields . . .	9,879, or 1 in 109·4	5,597, or 1 in 193·0
5. <i>Seats of the Cotton and Linen Manufacture.</i> —Manchester, Preston, Salford, Bolton, Stockport, Oldham, Blackburn, Wigan, Staly-Bridge, and Ashton-under-Lyne . . .	6,401, or 1 in 137·8	1,583, or 1 in 557·3
6. <i>Seats of the Woollen and Worsted Manufacture.</i> —Leeds, Bradford, Halifax, Rochdale, Huddersfield, and Kidderminster . . .	3,576, or 1 in 122·7	670, or 1 in 654·9
7. <i>Seats of the small and mixed Textile Fabrics.</i> —Norwich, Nottingham, Derby, Macclesfield, Coventry, Newcastle-under-Lyne, and Congleton . . .	1,809, or 1 in 163·0	617, or 1 in 478·1
8. <i>Seats of the Hardware Manufacture.</i> —Birmingham, Sheffield, and Wolverhampton . . .	4,999, or 1 in 120·4	764, or 1 in 709·0

Notwithstanding the increase in the numbers of the criminal classes generally, as shewn in the returns for the metropolis, the proportion to the population is still lower than in any of the groups of towns. It continues highest in the pleasure towns. The proportion of prostitutes to the population also continues, as in former years, highest in the commercial ports, and lowest in the seats of the hardware manufactures. The numbers of each of these classes, as shewn in the returns for 1865, and their proportion to the population in each of the groups of agricultural counties, as are follows:—

	Criminal Classes.	Prostitutes separately.
9. <i>Eastern Counties.</i> —Essex, Norfolk, Suffolk, and Lincoln . . .	5,747, or 1 in 214·6	620, or 1 in 1,990·0
10. <i>South and South-western Counties.</i> —Southampton, Wilts, Dorset, and Somerset . . .	7,033, or 1 in 153·9	1,031, or 1 in 1,068·0
11. <i>Midland Counties.</i> —Cambridge, Bedford, Northampton, Hertford, Oxford, Bucks, and Berks . . .	6,321, or 1 in 157·5	453, or 1 in 2,197·6

(To be continued).

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NOTICE.

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THE JURIST.

LONDON, AUGUST 25, 1866.

THE practical difficulties that must follow the grafting on one jurisdiction part only of what belongs to another, dissimilar to it in its principles and system of administration, have been conspicuously manifest on the partial endowment of the courts of law with equitable jurisdiction by the act of 1854. Much, no doubt, was accomplished by that measure; but much which it may be presumed was intended by the learned originators of it to be done remains undone, and can never be effected, unless the Legislature thinks proper to give to the courts of law a wider range of inquiry and additional machinery for the purpose of equitable decrees.

To the difficulty of fitting on equitable jurisdiction to the existing system of administration and machinery of the courts of law, may be traced the limited operation of some of the sections of that act. The sections relating to mandamus were founded on the recommendations of the Commissioners in their Report (pp. 38 to 42); and their object appears to have been, principally, at least, to give the courts of law the jurisdiction exercised by the courts of equity, under the head of "specific performance." But the Courts have held, on the sections relating to mandamus, that though the act facilitates the obtaining such a writ, and extends the power of granting it to other courts as well as to the Queen's Bench, yet that it refers only to duties of a public or quasi public nature, and not to the specific performance of contracts. *Benson v. Paull* (6 El. & Bl. 273) was an action in which the plaintiff sought, under the provisions of sect. 68, to claim a writ of mandamus, to enforce the specific performance of an agreement to grant a lease; and it was held, on demurrer, that the declaration was bad, the case not being within the provisions of the act. Lord Campbell, in his judgment (p. 275), after making some observations against the general powers contended for in the argument, said, "But even if the obligation were confined to contracts, of which equity would enforce the specific performance, there are many previous inquiries to be made, as, for instance, what the terms of the lease should be, and generally what arrangements are necessary to secure that equity is done by the enforcement of the contract. *The act gives us no means of making such inquiries.* I think the enactment must be confined to such duties as might have been enforced by a prerogative writ of mandamus." And Wightman, J., in his judgment, agreeing that the duty, which might be enforced under sect. 68, was not a duty merely arising from a contract, and that the act could not be construed as giving the general powers contended for, concluded by saying, "*the omission of all machinery for regulating the exercise of such powers shews it was not the intention of the Legislature to grant them.*"

Then, again, on the provisions as to pleading equitable defences, sect. 83 says, that it shall be lawful for

the defendant, in any cause in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence; and it has been now settled by a number of cases, that a plea on equitable grounds can only be supported at law where a court of equity, under similar circumstances, would decree an absolute, unconditional, and perpetual injunction. One of the earliest decisions on the point was that of *The Mines Royal Societies v. Maignay* (10 Exch. 489). There the Court found, that in order to admit the defence pleaded, it would first be necessary to order that the surrender of a certain lease should first be executed by the defendant; and Parke, B., said, "In my opinion, the equitable defence allowed means such a defence as would in a court of equity be a complete answer to the plaintiff's claim, and would, as such, afford a sufficient ground for a perpetual injunction, granted absolutely and without any conditions. But, according to the statement in the plea, a court of equity would not interfere except upon the condition of the execution of a valid surrender by the defendant. *We have no machinery by which we can compel the execution of a surrender.* The statute does not say that the courts of common law may give relief on equitable conditions, but that a plea shall be allowed which discloses a defence upon equitable grounds."

Difficulties of a cognate character have arisen on the right to claim an injunction, which is given in case of breach of contract or other injury. Where the party injured is entitled to maintain, and has brought, an action, he may claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right; and in such action judgment may be given that the writ of injunction do or do not issue, as justice may require. (See sects. 78, 80, 81, 82). Here, again, the court of law, being confined to the particular action, may not have the parties before it against whom the injunction, to render it effectual for the purposes intended, should go, and may, therefore, be entirely unable to put a stop to the continuance or repetition of the injury complained of.

An instance of this is to be found in the recent case in the Exchequer, *Matthews v. King* (3 H. & C. 910). There an injunction against the defendant in the action was refused to be granted. It is true that equity would, under similar circumstances, have refused the injunction against that individual defendant, because, before it was applied for, he had parted with his shares in the company, whose acts were complained of. But in equity the proceedings would have been extended to all parties directly or indirectly engaged in the commission and repetition of the injury complained of, while the only person the court of law would ever have attempted to control would have been the individual defendant, as to what he himself might do, or authorise to be done, while in the meantime persons entirely beyond his control could with impunity have continued the injurious acts. We take the summary of the case

referred to from the marginal note (3 H. & C. 910). The plaintiff obtained a verdict and judgment against the defendant, a shareholder in a cost-book copper mining company, in an action for a nuisance caused by the working of the mine. The plaintiff having afterwards obtained a rule nisi for an injunction under the 82nd section of the Common-law Procedure Act, 1854, the Court discharged the rule, it appearing by affidavit that the defendant had bona fide sold his shares before notice of the application for an injunction. In delivering judgment, Pollock, C. B., after remarking on the various circumstances which the Court, in the exercise of the new power conferred on it by the Common-law Procedure Act, 1854, might take into consideration—said that the more important question was, whether the Court would grant an injunction when there were no means by which they could enforce the writ; and concluded, that they could not grant an injunction against the defendant, who had ceased to have any interest in, or control over, the works. Martin, B., concurred, but said that he was at the same time disposed to construe the act of Parliament liberally, and thought that where a plaintiff had established his legal right, they ought to stop by injunction a continuance of the injury to his property. That there, however, the defendant had parted with his shares, and there was nothing to prevent him doing so. That had it appeared that the alleged sale was not bona fide, but a mere pretence, he would have enjoined him to put a stop to the nuisance. Channell, B., concurring in the judgment, observed, that the Court had no power to grant the injunction, except under the 82nd section of the Common-law Procedure Act, 1854, which enables them to enforce obedience to the writ by attachment; and that the defendant had no longer that interest in the concern which was needful to justify the Court in issuing the writ. That there was an entire absence of any imputation of improper conduct on the part of the defendant, and they could not assume that the sale of the shares was not bona fide.

The learned reporter makes the following observations in a note to the case:—"It would seem that the power under this section to grant an injunction was intended to apply only to a wrongful act, or breach of contract, committed personally or individually, otherwise a shareholder in a company of this kind, or one of several partners, against whom a verdict and judgment had been obtained, might be attached for disobedience of the injunction, although he had no power whatever to prevent a continuance of the wrongful act or breach of contract, which could not have been intended. On the other hand, if, in this case, an injunction had issued to restrain the defendant *personally* from continuing the nuisance (which, it is conceived, would have been the proper form), it would have been of no avail, inasmuch as the nuisance was not continued by the defendant, but by the company. This difficulty could not arise in equity, because a court of equity would not grant an injunction against an individual shareholder in a company of this kind, or against one of several partners, but would require all the shareholders or partners to be before the Court."

No doubt the power that the courts of law have to grant an injunction, and to attach for disobedience to it, can be used only against the defendant or defendants in the particular action, and can only affect them as to acts which they themselves do, or authorise to be done; and, therefore, it must in many cases fail entirely to provide the remedy sought for by the injured party.

The conclusion of the whole matter on these decisions as to specific performance, equitable defences, and the granting of injunctions, is, that in the present state of the law, those who require the aid of equitable doctrines to protect their property, or enforce their rights, will be well advised to have recourse to the courts of equity for that purpose, for it is only in a few exceptional cases that the courts of law have the power to interpose and give relief on equitable grounds. It is difficult to give the courts of law greater powers, without effacing the line that divides the administration of equity and common law—without, in fact, sweeping away all distinction between the Courts of Chancery and the Courts of Law. And perhaps, after all, considering the high standard of excellence reached in the courts of separate jurisdiction, it will, on the principle of division of labour which prevails in this country, be best to make only such changes in them as may usefully extend their powers, but still keep them separate, leaving the main current of business to flow in its accustomed channels.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Continued from p. 331).

The returns shew a continued decrease in the number of houses of bad character, the total number for 1864-5, being less by 1,075, 4·9 per cent. than the number for 1863-4. The decrease extends to each description of house, the number of houses of receivers of stolen goods being less by 65, or 2·7 per cent.; the number of houses the resort of thieves and prostitutes by 502, or 7·8 per cent.; the number of brothels and houses of ill-fame by 143, or 2 per cent.; and the number of tramps' lodging-houses by 335, or 5·7 per cent.

The following are the numbers under each head, as shewn in the returns for 1865:—

Houses of receivers of stolen goods	2,323
Houses the resort of thieves and prostitutes, viz.:	
Public houses	2,107
Beer shops	2,006
Coffee shops	413
Other suspected houses	1,342
	5,868
Brothels and houses of ill-fame	6,949
Tramps' lodging-houses	5,544
	20,689
Total houses of bad character	

The total number of murders reported was 135, exceeding by one the number in the preceding year. 76 were reported from the counties; 51 from boroughs, and eight by the metropolitan police. In Lancashire 28 cases occurred, of which six were reported by the county constabulary; 13 cases occurred at Liverpool; four at Manchester, and five in other boroughs. In the preceding year the number of cases was 23, of which five were reported by the county constabulary;

nine occurred at Liverpool; three at Manchester; three at Wigan, and three in other boroughs. In Yorkshire there were 15 cases; seven reported by the county constabulary, and eight in the boroughs. In the preceding year there were but five cases in the West Riding, with one at Bradford, and one at Sheffield. In Durham there were 10 cases, inclusive of one at Sunderland; in the preceding year there were but three cases in the county. In the metropolitan police district eight cases occurred, against 14 in the preceding year, there having been no case in the city of London in either year. In Somerset there were seven cases, four in the county, and three in boroughs; in Southampton seven, five in the county, and two in boroughs; in Devon six, five in the county, and one at Devonport; in Kent six, three in the county, and three in boroughs; in Gloucestershire five, inclusive of one at Bristol; in Staffordshire five, inclusive of one at Wolverhampton; in Worcestershire five, inclusive of one in the city of Worcester; in Berks and Leicester three each; in Cheshire two, including one at Birkenhead; in Lincolnshire and Shropshire two each; in Norfolk two, including one at Norwich; in Oxfordshire two, including one in the city of Oxford; in Sussex two, including one at Hove; in Cumberland, Herefordshire, Northamptonshire, Warwickshire, and Westmoreland, one each; in Derbyshire, one at Derby; and in Monmouthshire, one at Newport; in Wales eight cases were reported; in Anglesey, Brecon, Denbigh, and Merioneth, one each; in Glamorganshire four, inclusive of one at Cardiff, and one at Swansea; in 13 English and Welch counties no case of murder occurred.

There were 54 attempts to murder, 32 of which were reported by the county constabulary, five by the metropolitan, and 17 by the borough police; in the preceding year the number of attempts to murder was 46, of which 30 were reported by the county constabulary; 15 were in different boroughs, and one in the city of London.

The cases of manslaughter were 279, shewing an increase of 65, or 30.3 per cent., as compared with the number in the preceding year. Of these 123, or 44.1 per cent., were reported by the county constabulary; 95, or 34.1 per cent., were in cities, boroughs, &c.; 57, or 20.4 per cent., in the metropolitan police district; and four, or 1.4 per cent., in the city of London. In the preceding year, of 241 cases, 101, or 41.9 per cent., were in the counties; 88, or 36.5 per cent., were in cities, boroughs, &c.; 49, or 20.3 per cent., in the metropolitan police district; and three, or 1.3 per cent., in the city of London.

In 1864-5 there were 769 cases of shooting at, stabbing, &c., being less by four than the number of these offences in the preceding year. Of these 299, or 38.9 per cent., were in the counties; 336, or 43.8 per cent., in boroughs, &c.; 132, or 17.1 per cent., in the metropolitan police district; and two, or 0.2 per cent., in the city of London. Of the 773 cases in the preceding year, 337, or 43.6 per cent., were in the counties; 295, or 38.2 per cent., in boroughs, &c.; 138, or 17.8 per cent., in the metropolitan police district; and three, or 0.4 per cent., in the city of London.

The cases of concealment of birth were 232 in 1864-5, or less by three than in the preceding year. Of these 11.9, or 51.3 per cent., were in the counties; 26, or 10.7 per cent., in boroughs, &c.; 88, or 39.9 per cent., in the metropolitan police district; and none in the city of London. In the preceding year 113, or 48.1 per cent., were in the counties; 29, or 12.3 per cent., in boroughs, &c., and 93, or 39.6 per cent., in the metropolitan police district.

The number of burglaries reported in 1864-5 was 2615, being an increase of 24 upon the number in the

preceding year. Of these 1082, or 41.4 per cent., were in the counties; 1177, or 45.0 per cent., in boroughs, &c.; 342, or 13.1 per cent., in the metropolitan police district; and 14, or 0.5 per cent., in the city of London.

In the preceding year, of 2591, the total number, 1192, or 46.0 per cent., were in the counties; 1053, or 40.6 per cent., in boroughs, &c.; 325, or 12.6 per cent., in the metropolitan police district; and 21, or 0.8 per cent., in the city of London.

In the cases of robbery on the highway, and attempts, and demanding money with menaces, there was an increase of 15, as compared with the number in 1863-4. Of 716, the total number of these cases reported in 1864-5, 156, or 21.8 per cent., were in the counties; 443, or 61.9 per cent., in boroughs, &c.; 115, or 16.0 per cent., in the metropolitan police district; and two, or 0.3 per cent., in the city of London.

Of the number reported in 1863-4, 195, or 27.8 per cent., were in the counties; 405, or 57.8 per cent., in boroughs, &c.; 96, or 13.7 per cent., in the metropolitan police district; and five, or 0.7 per cent., in the city of London.

The cases of arson shew a decrease of 73, or 13.4 per cent., as compared with the number in 1863-4. Of the total number reported in 1864-5, viz. 470, 425, or 90.4 per cent., were in the counties; 28, or 6.0 per cent., in boroughs; 17, or 3.6 per cent., in the metropolitan police district. In 1863-4, 481, or 88.6 per cent. of the total number, were in the counties; 41, or 7.5 per cent. in boroughs, &c.; and 21, or 3.9 per cent. in the metropolitan police district. In 1864-5 as in the preceding year, Rutland was the only English county in which no case of arson was reported. Six of the Welch counties are also free from this offence. In the remaining counties of Wales the number of cases was only 16, viz. in Anglesey, Cardigan, and Carmarthen one each, in Denbigh four, in Merioneth seven, and in Montgomery two. The English counties in which the cases were most numerous, were, Southampton, 33, with three in the borough of Portsmouth, and one at Southampton; Yorkshire 33, viz. in the East Riding 20, in the West Riding eight, in the North Riding five, with one in each of the boroughs of Leeds and Middlesborough; Suffolk 32; Lincolnshire 27; with one in the city of Lincoln, and nine in the borough of Stamford; Northamptonshire 24, with one at Peterborough; Kent 21, with one at Folkestone, one at Rochester, and one at Tunbridge; Cambridgeshire 19, with one at Ely.

In the number of attempts to commit suicide there was an increase of 67, or 9.3 per cent. Of 787, the total number of cases in 1864-5, 174, or 22.1 per cent., were in the counties; 244, or 31.0 per cent., in boroughs, &c.; 342, or 43.5 per cent., in the metropolitan police district; and 27, or 3.4 per cent., in the city of London. In the preceding year, 125, or 17.5 per cent. of the total number, were in the counties; 199, or 27.6 per cent., in boroughs, &c.; 355, or 49.3 per cent., in the metropolitan police district; and 41, or 5.6 per cent., in the city of London.

The number of indictable offences of each description committed within the year, so far as known to the police, the number of persons apprehended for each description of offence, and the disposal of the persons so apprehended, whether discharged, bailed, committed for want of sureties, bailed, or committed for trial, when brought before the magistrates are shewn in Table 5, the offences being classed under the six heads of offences against the person; against property, with violence; against property, without violence; malicious offences against property; forgery and offences against the currency; and offences not included in the foregoing.

Stating, as in former years, the number of crimes committed, and the number of persons apprehended under the different classes of offences, and also shewing the disposal of the persons apprehended in each case, the results of 1864-5 are as follows, the similar results for previous years being added for comparison.

The total number of offences against the person was 3123; the number of persons apprehended during the year for offences of this description was 3260. Of the 674 were discharged by the magistrates, leaving 2586 as the number against whom the evidence appeared sufficient. This number is in the proportion of 82·8 per cent. to the number of offences of this class reported. In the preceding year, under this class of offences, this proportion was 83·3; in 1862-3 it was 83·0; in 1861-2 it was 84·7; in 1860-1 it was 81·1; in 1859-60 it was 77·4; in 1858-9 it was 73·9.

The number of offences against property, with violence, was 5160. The number of persons apprehended during the year for offences of this class was 2789; of these 753 were discharged on being brought before the magistrates, leaving 2036 as the number against whom the evidence appeared sufficient. This number is in the proportion of 39·4 per cent. to the number of offences of this class reported. In 1863-4, under this class of offences, this proportion was 59·2 per cent.; in 1862-3 it was 43·0 per cent.; in 1861-2 it was 38·8 per cent.; in 1860-1 it was 36·0 per cent.; in 1859-60 also 36·0 per cent.

There were 669 malicious offences against property reported, and 562 persons apprehended for offences of this class, of whom 205 were discharged by the magistrates, leaving 357 as the number against whom the evidence appeared sufficient. This number is in the proportion of 53·3 per cent. to the number of offences of this class reported. In the preceding year, under this class of offences, this proportion was 56·0 per cent.; in 1862-3 it was 70·4 per cent.; in 1861-2 it was 54·3; in 1860-61 it was 49·4; in 1859-60 it was 38·1 per cent.

For the three remaining classes of offences reported amounting together to 43,298, 22,438 persons were apprehended, of whom 7082 were discharged, leaving 15,356 as the number against whom the evidence appeared sufficient. The latter number is in the proportion of 35·4 per cent. to the total number of offences of these descriptions taken together. This proportion, under all the offences referred to, was, in the preceding year 35·0 per cent.; in 1862-3 it was 36·7 per cent.; in 1861-2 it was 36·3 per cent.; in 1860-1 it was 33·1; in 1859-60 it was 29·4 per cent.

As already stated, the total number of offences reported was 52,250; the total number of persons ap-

prehended was 29,049; the total number of persons discharged on being brought before the magistrates was 8814, leaving 20,235 as the number against whom the evidence appeared sufficient. The latter number is in the proportion of 38·7 per cent. to the total number of offences reported. In the preceding year, this proportion, calculated on the total numbers, was 39·2 per cent.; in 1862-3 it was 40·5 per cent.; in 1861-2 it was 37·4; in 1860-1 it was 36·1; in 1859-60 it was 23·1 per cent.

The number of persons committed or bailed for trial having been 20,014, supposing 25 per cent. (about the usual proportion) of this number to be discharged or acquitted on trial, there would remain 15,011 as the number convicted. But this number is in the proportion of nearly 29 per cent. to the number of indictable offences reported. It would, therefore, appear that for 71 per cent. of the offences committed, or nearly three out of every four, no person is convicted.

In addition to the indictable offences reported, and the persons apprehended and disposed of in the manner already shewn for such offences, 312,882 persons were summarily convicted by the magistrates. Supposing the same proportion with regard to these as in the case of the indictable offences reported, it would follow that nearly 1,100,000 offences liable to summary conviction would escape unpunished.

The total number of persons proceeded against summarily, and the number convicted and discharged respectively during the year, were as follows:—

	Males.	Females.	Total.
Proceeded against . . .	370,460	88,454	458,914
Convicted.	362,214	50,668	312,882
Discharged	108,246	37,786	146,032

The proceedings for offences against the game laws were as follows during the year 1864-5:—

Trespassing in the day-time in pursuit of game	9008
Night poaching and destroying game	554
Illegally selling or buying game	37
Poaching Act (1863)	793
	10,392

The total shews an increase of 275, or 2·7 per cent., upon the number for 1863-4. The increase is under the first and third heads, amounting respectively to 478, or 5·3 per cent., and 11. Under the second and fourth heads there is a decrease; under the former of 120, or 17·8 per cent., and under the latter of 97, or 10·8 per cent.

The following are the comparative costs for the whole of the prisons for each of the last five years:—

	1865.	1864.	1863.	1862.	1861.
Total ordinary charge	£558,757	£453,045	£459,556	£435,820	£429,547
Average annual cost per prisoner	24l. 3s. 3d.	23l. 7s. 10d.	23l. 7s. 5d.	24l. 3s. 4d.	23l. 0s. 3d.

PART II.—COMMON LAW—EQUITY—CIVIL AND CANON LAW.

The returns for all the courts of civil jurisdiction are complete for 1865, and afford similar information to that given for the preceding year, with some additional matter under the Court of Probate.

In the preliminary Report the usual summaries of the business in 1865 are given for each of the different courts, with the totals for 1864, and, generally, the average of five years, for comparison.

The returns furnished by the different officers of the courts of common law for the year 1865 will be found abstracted in the tables, and arranged in the same form as in preceding years. In the first table are

shewn certain of the proceedings of the Court of Queen's Bench on the Crown side, as given in the return made by the Queen's coroner and attorney and the Master on the Crown side. The return shews the processes issued and the matters heard by the court in banco, and those by a single judge in each of the four terms; but it is explained by the Queen's coroner and attorney and the Master, that the casting of the several columns will not give any adequate notion of the total proceedings, inasmuch as the same matters appear more than once in the same column, and that the real amount of total proceedings is as given below. The nature of the offences tried on the Crown side is stated to be conspiracies, perjuries, assaults, nuisances, and

other misdemeanours, and occasionally, but very rarely, felonies. But the trials take place at Nisi Prius in London and Middlesex, and at the assizes in the other counties, and no record is kept in the Crown Office of the number of cases or of the number of persons tried, except where the sentences are passed by the court in banco, which very seldom occurs now, as the sentences are, by virtue of stat. 4 Geo. 4 and 1 Will. 4, c. 70, almost invariably passed by the judge at Nisi Prius, and not afterwards entered upon record, except in certain cases of acquittal and of conviction, and in cases where fines are imposed. In 1865 there were six cases of acquittal, and two of conviction in which judgment was entered up in the Queen's Bench, and one case, that of the Midland Railway Company, in which the sentence was "fined 1s."

The real amount of the total proceedings for 1865, as stated by the Queen's coroner and attorney and the Master, is as follows, the corresponding numbers for 1864, being given for comparison, and the average of the five preceding years:—

	1865.	1864.	Average. 1859-63.
On writs of mandamus—made absolute	10	17	20
On quo warranto—Informations filed	10	1	5
On writs of habeas corpus—Applications for writs	47	34	39
On writs of certiorari—by Court 23. } by judge 43. }	66	87	83
Judgments and executions	8	6	18
On grand jury bills	—	13	—
On informations ex officio	—	—	2

	1865.	1864.	Average 1859-63.
On orders of sessions—Removed into Queen's Bench	24	13	27
On special cases from quarter sessions (13 & 13 Vict. c. 45)	13	18	11
On special cases on proceedings be- fore justices (20 & 21 Vict. c. 43).	34	43	47

It is not possible, it is stated, to give a correct account of the amount of costs taxed, inasmuch as the bills of costs are not only often withdrawn from taxation when partly taxed, but when completed are sometimes taken away by the attorneys, and not returned to the office.

The total amount of fees received in the Crown Office, exclusive of business done for the public departments for which no fees are received, was 625*l.* 9*s.* 10*d.*, which includes all the fees received at the office, not only in respect of the different items specified in the return, but also for other duties, as writs of subpoena ad testificandum, copies of proceedings, &c. This amount exceeds the amount for the preceding year by 47*l.*, or in the proportion of 7·5 per cent. This is higher than the amount for 1863 by 18*l.*, or 2·8 per cent., but less than the average of the five preceding years by 30*l.*, or 4·5 per cent.

The form of procedure in the three superior courts of common law being similar, the chief proceedings in each court, as given in the returns for 1865, furnished by the Masters, are shown in the following summary. The totals for the three courts, of the matters under each heading, are given for 1864, and the average of the totals for the five preceding years :—

Nature of the Proceedings.	1885.								1884.		Average of the Totals for 1889-93.	
	Queen's BENCH.		COMMON PLEAS.		EXCHEQUER.		TOTAL.		TOTAL.			
	Process issued.	Matters heard.	Process issued.	Matters heard.	Process issued.	Matters heard.	Process issued.	Matters heard.	Process issued.	Matters heard.	Process issued.	Matters heard.
Writs of summons issued	37,381	—	33,789	—	48,027	—	119,007	—	113,166	—	100,349	—
Writs of capias	146	—	123	—	155	—	424	—	520	—	558	—
Appearances entered	10,424	—	11,045	—	12,256	—	33,723	—	30,116	—	26,624	—
Judgments	12,037	—	10,401	—	16,002	—	38,440	—	36,564	—	33,639	—
Executions	8,920	—	7,172	—	11,376	—	27,468	—	26,674	—	25,729	—
Motions for new trials	—	167	—	182	—	157	—	496	—	566	—	562
Other special motions.	—	262	—	284	—	190	—	716	—	705	—	781
Hand motions and on side bar rules	1,286	—	1,221	—	1,334	—	2,831	—	3,376	—	3,405	—
Causes referred to Masters	167	—	266	—	296	—	729	—	664	—	631	—
Total amount of fees	£26,516 13 6		£19,725 13 0		£23,645 19 8		£74,688 5 6		£60,807 4 6		£66,092 18 0	

It will be seen that a great increase has taken place both in the amount of business and in the amount of fees. The total number of writs of summons issued in 1865 is in excess of the number in the preceding year by 5939 or 5·2 per cent., and of the average of the five years by 18,748, or 18·6 per cent. The increase extends to each of the three courts, but in the greatest degree to the Court of Queen's Bench. As compared with 1864, the increase in the number of writs of summons issued is, in the Court of Queen's Bench, 2996, or 8·7 per cent.; in the Court of Common Pleas, 1589, or 4·9 per cent.; and in the Court of Exchequer, 1354, or 2·9 per cent. In the amount of fees the increase is, in the Court of Queen's Bench, 2005*l.*, or 8·2 per cent.; in the Court of Common Pleas, 1054*l.*, or 5·6 per cent.; and in the Court of Exchequer, 1822*l.*, or 6·8 per cent.

The number of bills of costs taxed in the Court of Queen's Bench in 1865 is stated to have been, between party and party, 6678, and under stat. 6 & 7 Vict. c. 73. 1494. No return was given under this head for

the Court of Queen's Bench for the year 1864; nor is any return given of the number of bills taxed in the Court of Common Pleas. The number in the Court of Exchequer for 1865, exclusive of bills taxed under the statute, but inclusive of 2107 taxed under the Sheffield Waterworks Act, 1864, was 10,392. In 1864 the number, exclusive of bills taxed under the statute, was 7692.

The returns furnished by the associates of the three Superior Courts of Common Law have been made to shew for 1865 the number of remanets from the preceding year for trial at the commencement of the year, and also the number at the close of the year. The following abstract of the returns made by the associates, and by the clerks of assizes and clerks of the Crown, gives the number of causes entered for trial and the number of trials, both at Westminster and on circuit, for each of the three courts for 1865, with the totals for the preceding year, and the average of the totals for the five years 1859-63. The number of remanets from the previous year is given for 1865, with regard

to the courts at Westminster, and the number of causes withdrawn, struck out, &c., with the remanets at the close of the year with regard both to the courts at Westminster and to the circuits:—

Number of Causes.	1865.								1864.		Average of Totals for 1859-63.	
	Queen's Bench.		Common Pleas.		Exchequer.		Total.		Total.			
	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.
Remanets from previous year .	85	—	127	—	16	—	238	—	—	—	—	—
Entered for trial	994	571	1065	395	877	658	2956	1624	2501	1322	2222	1243
Trials	—	417	—	281	—	470	—	1168	—	953	—	942
<i>Defended</i>	323	—	411	—	330	—	1064	—	965	—	970	—
<i>Undefended</i>	94	—	80	—	109	—	283	—	254	—	192	—
Withdrawn, struck out, &c. .	544	145	557	109	494	183	1535	437	1126	339	965	236
Remanets	127	9	164	5	13	5	304	19	—	—	—	—
Adjourned, &c.	1	—	—	—	7	—	—	—	8	—	—	—

(To be continued).

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THE JURIST.

LONDON, SEPTEMBER 1, 1866.

THERE could be no doubt, that in the ordinary case of principal and agent, that where the contract having been made by the agent in his own name, he is sued upon it, and judgment recovered against him, no action for the same cause of action could be afterwards maintained against the principal. And, indeed, where the principal is known, much less than suing the agent to judgment would prevent the party claiming under the contract against him from maintaining an action against the principal. If, for instance, he had, knowing the principal, by any deliberate act clearly elected to credit the agent, in such a case it would be conclusive against his having any further claim against the principal; and this would be on the old rule of law, explained by Crompton, J., in *Ward v. Day* (4 B. & S. 352), "Quod semel placuit in electionibus amplius displicere non potest;" that is, if a man, having an option, by some solemn act, declared his determination, and elected, he cannot afterwards recede from it; and the reason of this is, that the other party may have been led by this expression communicated to him to alter his position. On the general rule of law just referred to, an exception has been said, by Mr. Justice Story, in his work on agency, to exist in the case of masters and owners of ships. And this doctrine of an exception in the case of shipowners and masters of ships has recently been brought to the notice of the Court of Exchequer in the case of *Priestly v. Fernie* (3 H. & C. 984), and has there, after a full consideration of the whole matter, been held to be erroneous. In Story on Agency, § 295, p. 397, 4th ed., it is said, "There seems, however, to be one peculiarity in the Roman Law on this subject; and this, while it gives a right to proceed against the owner or employer, as well as against the master, of the ship for the amount of the repairs and supplies furnished for the ship, and for other contracts made by him within the scope of his employment, yet if the creditor elects to proceed in a suit against either of them, he thereby discharges the other: 'Est autem nobis electio, utrum exercitorem an magistrum convenire velimus. Hæc actio ex personâ magistri in exercitorem dabitur. Et ideo si cum utro eorum actum est cum altero agi non potest.' Our law, on the other hand, while it gives election to the creditor to sue either the master or the owner in a distinct and separate action, does not preclude the creditor, by such election, from maintaining another action against the party not sued, unless in the first action he has obtained a complete satisfaction of the claim." This point has now been directly raised in the case in the Exchequer, where the master having been sued to judgment without any actual satisfaction of the claim having been obtained, the owners were sought to be made liable in a second action.

In *Priestly v. Fernie*, the action was brought by the secretary of the Melbourne Gas Company, on its behalf, against the owners of a vessel called The Queen of Commerce, of which D. Kavanagh had been the

master, for a voyage from the port of Liverpool to Hobson's Bay, Port Philip, and the plaintiff claimed damages for the non-delivery, pursuant to the terms of the bill of lading, of goods shipped on board the vessel for that voyage. The bill of lading had been signed by the master (Kavanagh) in his own name, and the defence pleaded to the declaration which set out the bill of lading, and alleged performance of conditions by the company, and assigned as a breach by the defendants, the owners of the vessel, the non-delivery of the goods, was, that the plaintiff had, as secretary for the said company and in its behalf, sued Kavanagh as having been the master, and having signed the bill of lading in the Supreme Court at Melbourne, for the same identical causes of action, and recovered judgment in that court against him, and then had, in the same capacity, brought an action on such judgment in the Court of Exchequer at Westminster, and recovered judgment against him for 288l. 10s. 10d., and costs, and taken him in execution on a ca. sa. under such judgment. To this the plaintiff replied, that whilst Kavanagh was a prisoner under the said writ of ca. sa., he became bankrupt, and was discharged from the judgments, and that the same remained wholly unsatisfied, and that the plaintiff had not at any time before the recovery of the said judgment in the said Court of Exchequer, or before the said Kavanagh obtained his order of discharge under the said bankruptcy, any notice or knowledge that the said bill of lading and contract was made by the defendants, or any of them. The plaintiff also demurred to the plea. The defendant rejoined, that after Kavanagh became bankrupt, as in the replication mentioned, the plaintiff proved under the bankruptcy in respect of the judgment recovered in the Court of Exchequer for the amount due upon the judgment. For a fuller account of the pleadings we must refer to the report at length, which sets out all that is material. The Court held that the action against the owner was not maintainable. The judgment of the Court was delivered by Baron Bramwell, who, after stating the ordinary rule, said—"But it is said that the liability of the master of a vessel acting for his owners, and their liability where he acts for them, is different from the liabilities in ordinary cases of principal and agent, and that first one and then the other may be sued. The plaintiff's argument, then, viz. that the present case is anomalous, is exceptional. When that is contended, strong reasons ought to be given for it."

Then, after an examination of the reasons for the exceptional doctrine contended for, the judgment concludes as follows:—"The case, then, must rest, not on principle, but on authority, and that authority is limited to a passage in Story on Agency. It is remarkable that he is of opinion that there was, by the Roman law, an option to sue either, but not both. If so, what he lays down is peculiar to 'our law,' and doubly anomalous. He gives no reason for it, but cites 2 Livermore on Agency, 267. He (Story) says the second action may be maintained, unless 'in the first action he has obtained complete satisfaction of his claim.' On reference, however, to Livermore, we

say it with great respect, he really says nothing in support of such a proposition. What he says is, masters of merchant vessels are personally answerable upon the contracts made by them in relation to the employment of the ship, to repairs, or to supplies furnished for the ship's use; 'for the law gives to the merchant who contracts with the master a twofold remedy, against the owner and against the master.' For this he cites *Rich v. Coe* (2 Cowp. 636; Story on Agency, § 290), which, though a very questionable decision, justifies Livermore's proposition, but not Story's. It only decides that the owners are liable upon an order by the master for necessities, though without their authority. It is true, Lord Mansfield says, the master, the owners, and the ship are trusted, but he says nothing to support what is contended for. It is remarkable Story does not cite this authority so cited by Livermore. *Melius est petere fontes quam secari rivulos.*

"Then, really, there is no authority for this contention, while there is much the other way, in the silence of all other writers on the subject. It is not suggested in *Abb. Ship.* 91; nor in *Kent's Commentaries* (see 3 *Kent*, 161); nor in *Maude & Pollock on Shipping*, p. 102; nor in *Maclachlan*, p. 128; nor in *Parsons on Maritime Law*, vol. 1, p. 378. There is one powerful consideration the other way, viz. if the master contracts under seal, no action lies on the contract against the owners. Why? If the master makes two contracts, one for himself and one for his owners, why should his contract being under seal prevent the owners being sued on that which the master has made for them? Nothing. But if he makes one contract only, as in ordinary cases where the agent contracts in

his own name, which a merchant may say binds him, because made in his name, or binds his owners because made for them, then the decisions are intelligible, and the expression is correct; the owners are not liable because of a technical rule, that a contract under seal cannot bind a person not executing, and not giving authority under seal for its making. (See *Abb. Ship.* 169, ed. 1856). *Leslie v. Wilson* (3 Ball & B. 171) is not opposed to this. Therefore, we give judgment for the defendant."

The above-mentioned decision of the Court of Exchequer will be read with interest both in England and America, inasmuch as it relates to a question of maritime law, "which is not the law of a particular country," and controverts the opinion of an eminent jurist, whose services in aid of that science which he made his principal study, are universally felt and acknowledged in this country as well as in his own.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Continued from p. 340).

In addition to the above, there were fifty-seven causes entered for trial on circuit in the Common Pleas of Lancaster; four in the Common Pleas of Durham; and eight issues from the Court of Probate, all of which were tried, with the exception of twenty from the Common Pleas of Lancaster, and one from the Common Pleas of Durham, which were withdrawn or struck out.

The nature of the suits tried at Westminster and of all those entered for trial at Nisi Prius on circuit is shewn under the following classification in the returns furnished respectively by the associates and by the clerks of assize and clerks of the Crown:—

Nature of the Suits.	Total.		Queen's Bench.		Common Pleas.		Exchequer.		Court of Probate.		Common Pleas of Lancaster.	Common Pleas of Durham.
	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	Nisi Prius.	Nisi Prius.	Nisi Prius.	Nisi Prius.
On promissory notes, bills of exchange, &c.	176	122	55	42	53	32	68	43	—	5	—	—
On bonds	20	12	2	2	13	5	5	5	—	—	—	—
For goods sold and delivered	198	171	71	48	65	41	62	75	—	7	—	—
For work and labour done	127	80	35	28	40	9	52	40	—	3	—	—
For money paid, advanced, or lent	48	80	11	25	22	21	15	33	—	1	—	—
For money received	13	27	7	11	2	5	4	11	—	—	—	—
For compensation for personal injuries, under Lord Campbell's Act	121	101	36	34	54	13	31	49	—	4	1	—
For compensation for other injuries from negligence	40	95	14	37	7	25	19	31	—	2	—	—
Replevin or distress	8	11	7	4	1	2	—	5	—	—	—	—
Trover or detinue	67	77	18	32	29	14	20	28	—	3	—	—
For breach of contract	172	163	52	49	68	44	52	57	—	3	—	—
Upon special contracts	39	105	—	15	39	36	—	51	—	3	—	—
For breach of warranty	9	22	6	11	3	4	—	7	—	—	—	—
For infringement of patents	7	1	—	1	6	—	1	—	—	—	—	—
For recovery of land (ejectments)	47	110	13	41	18	28	16	37	—	4	—	—
Trespass relative to land, houses, &c.	40	129	14	53	16	27	10	42	—	6	1	—
Questions on wills	—	2	—	—	—	—	—	—	2	—	—	—
For breach of promise of marriage	13	31	4	7	6	4	3	16	—	4	—	—
Seduction	2	12	—	4	1	3	1	4	—	1	—	—
Carried forward	1147	1341	345	444	443	313	359	534	2	46	2	—

Nature of the Suits.	Total.		Queen's Bench.		Common Pleas.		Exchequer.		Court of Probate.	Common Pleas of Lancaster.	Common Pleas of Durham.
	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	Nisi Prius.	Nisi Prius.	Nisi Prius.
Brought forward	1147	1341	345	444	443	313	359	534	2	46	2
Libel	19	50	5	25	5	11	9	13	—	1	—
Slander	24	36	8	12	10	12	6	10	—	2	—
Malicious prosecution	4	12	2	3	1	3	1	5	—	1	—
False imprisonment	24	34	12	9	9	11	3	13	—	1	—
Assault	32	38	8	17	11	6	13	13	—	1	1
Interpleader issues	16	39	3	15	5	9	8	9	6	—	—
On the case	—	31	—	8	—	7	—	14	—	2	—
Nuisance	1	11	—	7	—	1	1	3	—	—	—
Breach of covenant	17	38	1	12	—	9	16	16	—	1	—
For recovery of rent	12	10	8	1	2	4	2	3	—	2	—
On life and fire policies	2	4	—	1	—	—	2	3	—	—	—
Other suits	49	38	25	17	5	9	19	22	—	—	1
Total	1347	1682	417	571	491	395	439	658	8	57	4

The number of suits entered for trial at Nisi Prius on each circuit in 1865, and the number tried, were as follows:—

The returns furnished by the Masters of the three superior courts, after stating the number of causes entered for trial, the number of writs of *capias*, and the number of appearances entered for each quarter of the year, next shew the number of judgments, under the different terms, as given in the following summary, in the causes tried at Westminster, and in those on circuit, without distinction. It rests with the parties for whom verdicts are given at Nisi Prius to make application for the return of the issues into the courts at Westminster, and in some cases a compromise is made after the verdict, and no further proceedings appear.

The following are the judgments in each court as shewn in the returns for 1865, with the total numbers for the three courts in 1864, and the average of the totals for the five years 1859 to 1863, inclusive:—

Circuit.	Entered for Trial.	Tried.
Home	387	259
Midland	246	179
Norfolk	75	64
Northern	30	27
Oxford	155	112
Western	98	81
Bristol	55	45
North Wales	53	39
South Wales	40	24
County Palatine of Durham	24	19
County Palatine of Lancaster	530	367

	1865.				1864.	Average of Totals for 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	Total.	
On judges' orders:						
For default of service	632	760	883	2,275	2,135	1,916
On affidavit of service	9,113	7,089	11,841	28,043	26,755	25,579
On demurrers:						
For plaintiff	14	10	14	38	27	29
For defendant	5	2	6	13	10	22
On <i>postea</i> , writ of trial, and writ of inquiry:						
For plaintiff	571	525	633	1,729	1,494	1,510
For defendant or nonsuit	72	123	180	374	354	450
By default for plaintiff	1,297	1,410	1,832	4,539	4,028	3,659
On non <i>pro.</i> for defendant	67	62	37	166	155	159
On special cases:						
For plaintiff	4	11	8	23	10	17
For defendant	4	5	1	10	8	15
On judges' orders to stay proceedings:						
Warrants of attorney, certificates of arbitrators, &c. }	258	405	567	1,230	1,588	2,279
Total judgments	12,037	10,401	16,002	38,440	36,564	34,625

Comparing the totals, there is an increase in 1865 of 1876, or 5·1 per cent. above the number in 1864, and of 3815, or 11·0 per cent. above the average of the five years. The increase extends to each of the three courts, amounting, for the Queen's Bench, to 734, or 6·5 per cent.; for the Common Pleas, to 449, or 4·5 per cent.; and for the Court of Exchequer, to 693, or 4·5 per cent.; and this following an increase in 1864, as compared with 1863, amounting to 965, or 9·3 per cent. in the Court of Queen's Bench; of 1017, or 11·3 per cent., in the Court of Common Pleas; and of 839, or 5·8 per cent., in the Court of Exchequer.

The returns furnished by the associates shew the result of the causes tried in each of the courts at Westminster, in each description of suit. The returns made by the clerks of assize, and the clerks of the Crown for the counties palatine, shew the results in the causes

tried on circuit. The following summary shews the results of the suits both at Westminster and on circuit for each of the courts in 1865, with the total number for 1864, and the average of the totals for 1859 to 1863, inclusive:—

	1865.					1864.	Average of Totals, 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Nisi Prius.	Total.	Total.	
Verdict for plaintiff	288	358	289	809	1,742	1,565	1,468
Verdict for plaintiff, subject to special case }	8	5	4	32	49	38	36
Verdict by consent with reference	29	19	29	85	162	175	137
Verdict for defendant	46	70	63	164	343	275	343
Jury discharged without verdict	9	11	5	18	43	35	31
Juror withdrawn	15	11	14	52	92	86	80
Nonsuit	24	16	35	61	136	80	98
Stet processus, venue changed, record withdrawn, &c.	—	1	—	450	451	335	207
Total	417	491	439	1,671	3,018	2,589	2,394

In the following summary are shewn, as abstracted from the returns made by the associates and the clerks of assizes and clerks of the Crown, the amounts for which verdicts were obtained in each of the courts at

Westminster and upon circuit. The total amount recovered exceeds the amount shewn in the returns for 1864 by 167,374*l.*, or 45·4 per cent.:—

Number of each Class of Amounts.	Total.	Queen's Bench.	Common Pleas.	Exchequer.	Nisi Prius.
Above 5000 <i>l.</i>	17	3	2	2	10
5000 <i>l.</i> and above 3000 <i>l.</i>	15	1	—	3	11
3000 <i>l.</i> „ 2000 <i>l.</i>	14	1	4	5	4
2000 <i>l.</i> „ 1000 <i>l.</i>	36	5	10	5	16
1000 <i>l.</i> „ 500 <i>l.</i>	84	7	13	14	50
500 <i>l.</i> „ 300 <i>l.</i>	99	6	21	19	53
300 <i>l.</i> „ 200 <i>l.</i>	98	8	22	12	56
200 <i>l.</i> „ 100 <i>l.</i>	187	31	37	22	97
100 <i>l.</i> „ 50 <i>l.</i>	281	50	50	46	135
50 <i>l.</i> „ 20 <i>l.</i>	437	104	95	101	137
20 <i>l.</i> and under	357	50	84	40	183
Total amount recovered	£535,556	£80,304	£81,980	£88,528	£284,654

(To be continued).

THE LORD CHIEF JUSTICE AND MR. EDMOND BEALES.

THE following correspondence has been published :—
40, Hertford-street, Aug. 22, 1866.
Dear Sir,—I regret that I cannot, consistently with my sense of public duty, reappoint you as a revising barrister for the metropolitan district on the ensuing registration. The very active and leading part you have recently taken in a political agitation of no ordinary character would, as it appears to me, make such an appointment inexpedient for the public service. I am very far from thinking, that to entertain or to express decided political opinions ought to be considered as disqualifying a member of the bar from holding office as a revising barrister. In making these appointments, I have looked only to the fitness of the candidates, and have never stopped to inquire what were their political views. But, on the other hand, I must say I do not think it desirable that a gentleman holding what, in the view of many persons, would be deemed extreme opinions, and occupying a prominent position in the political warfare of the day—whether

on the one side or on the other—should be appointed to decide judicially on the claims of persons to vote in the election of members of Parliament. I do not, indeed, for my own part, believe that members of the bar, though entertaining strong political views, might not, in the vast majority of instances, be safely intrusted with the duty of deciding on the political rights of persons holding opposite opinions. I am fully satisfied that no strength of political bias would impair the perfect integrity and sense of justice which you would bring to the discharge of judicial functions, even on a political matter. But I cannot help thinking, that in the appointment of a revising barrister, something more is required than the assurance that the officer appointed will discharge his duty honestly and efficiently. It is not enough, that the partisan and fervid politician of to-day may be trusted to assume to-morrow the calmness and freedom from bias and passion which are essential to the office of the judge. Some consideration is, I think, due to the parties whose rights are about to be dealt with; nor, in my humble judgment, should any one be appointed to adjudicate on those rights who is certain to prove unacceptable to a considerable portion of those who will

have to appear before him. We all know how much of passion and prejudice is ever mixed up with everything that has relation to politics, and under no circumstances is the judicial office so subject to suspicion and distrust as when the subject-matter of the judgment involves considerations of a political character. The reasons for which the judges of the land are expected to abstain from mixing in party strife, appear to me to apply with equal force to every form of the judicial office in which questions of a political nature can arise; and eminently so to that branch of it which has to deal with the right of voting for members of Parliament. It would be vain to expect that the decisions of one deemed to be a strong political partisan, fresh from the heat and turmoil of political conflict, could carry with them that confidence which it is so essential that the administration of judicial functions should always inspire. The beaten suitor, if belonging to the opposite party, would naturally be disposed to ascribe his defeat to the partiality or bias of the judge, and his friends would be too ready to share in his belief. In the course of an extensive registration, questions of nicety and difficulty frequently arise, in which evidence and arguments are closely balanced, in which each party is sanguine of success, in which the judge does not pronounce without hesitation, and in which the grounds of the decision will not always carry conviction to the minds of those to whom it is adverse. In such cases, if the judge is known to be a man of extreme zeal and ardour in political matters, there will be—such is human nature—a tendency to suspect, however unjustly, that the decision, if not absolutely corrupt, has, at all events, been influenced by the party feeling of the judge. Every unbiassed mind will, I think, agree with me, that this is a result which should be avoided, if possible, in the interest of the suitor, the public, and the judge himself. The defeated suitor should at least have the satisfaction of feeling that he has suffered nothing from the partiality or unfairness of the judge. The judge, on the other hand, should have the satisfaction of knowing that the party against whom he decides can have no ground for questioning the purity of his motives, or the honesty of his judgment. I am reluctant to depart from the usual course of reappointing gentlemen who have served the office of revising barrister in the preceding year, but, as each annual appointment is to all intents and purposes a new one, I think that where a state of circumstances has arisen which, had they then existed, would have deterred me from making the appointment in the first instance, I ought not to renew it. And inasmuch as, had you now applied to me for the first time, I should not, for the reasons I have already given—whatever might have been my own confidence in you, or my desire, personally, to oblige you—have felt justified in appointing you, it appears to me that I cannot with propriety renew your appointment on the present occasion. I have entered thus fully into the reasons which have influenced me in not reappointing you, in order that you may see that I have not acted arbitrarily, or without having given full consideration to the matter. I trust you will do me the justice to believe that it is not on account of the particular opinions you have recently been advocating that I have thought it right to adopt the course I am now taking. I proceed on the simple principle, that it is desirable, for the reasons I have already set forth, that the office of adjudicating on electoral rights should not be committed to judges whom the fervour of political zeal and the championship of particular opinions may tend to deprive of the confidence of a portion of those on whose claims they are to decide. I shall regret if my decision herein should cause you any annoyance. I trust you will be-

lieve that I am actuated by no other motive than a conscientious sense of public duty. I had much satisfaction in appointing you when you applied to me in 1861. I should have been glad to renew the appointment this year, but, as I have already explained, I do not feel that I could do so with a proper regard to what is due to those on whose rights you would have to adjudicate.

I remain, dear Sir, yours faithfully,

A. E. COCKBURN.

Edmund Beales, Esq.

P.S.—You are at liberty to make what use you please of this letter. I am desirous it should be known that it is not from any doubt of your faithfully discharging the duties of the office that I have refrained from again appointing you.

Osborn House, West Brompton,
Aug. 24, 1866.

My Lord,—I feel certain that it must have been as painful for you to write as for me to receive the letter which reached me yesterday evening, communicating your intention of not renewing my appointment as revising barrister for the county of Middlesex, not on account of any deficiency on my part in discharging the duties of the office, but solely on account of the active and leading part I have recently taken in a political agitation of no ordinary character; this making, as your Lordship considers, my reappointment inexpedient for the public service. I appreciate to the utmost the kindly and friendly spirit which pervades your Lordship's letter, and which has induced you to enter so fully into the reasons which have influenced your decision. I accept at once, and in the full assurance of its truth, your Lordship's statement that you are actuated by no other motive than a conscientious sense of public duty, and I am as fully conscious of having myself been actuated by no other sense, by none but the most pure and upright motives in all my conduct, both professional and political. I have the entire testimony of my own conscience that you do me no more than simple justice, when you express yourself as fully satisfied that no strength of political bias would impair the perfect integrity and sense of justice which I would bring to the discharge of judicial functions, even on a political matter, and that your refraining from again appointing me is not from any doubt of my faithfully discharging the duties of the office. The best proof of this being but simple justice to me is, that I have never yet discharged the duties of my office without being as warmly complimented by the Conservative as by the Liberal agents for my perfect impartiality. Moreover, you may remember that when you kindly did me the honour of first appointing me to the office, it was by appointing me as additional revising barrister, in consequence of the register being in such a state that the ordinary staff of barristers could not get through the onerous work of revising the votes. I have both pleasure and pride in being able to state that my exertions have rendered that duty a comparatively easy one, and that the register is now more perfect and correct than it had been for years before my appointment. Under all the circumstances I trust I may be excused, when, with all the unfeigned respect and warm esteem which I entertain for your Lordship, I venture to suggest whether some proof or well-founded complaint of inefficiency or partiality in the discharge of my duties ought not to have preceded such a measure as that of not renewing my appointment. I have said I have felt pain my Lord, in receiving your communication, but the pain is not so

much on account of the loss and the other, possibly, serious consequent injury to myself in my profession, or the unjust or malevolent reflections it may bring upon me in some quarters, as on account of the very injurious and dangerous effect it may produce on the public mind, especially in forcing the people to the conviction, that no man, particularly no man in such a situation or profession as mine, however upright in the discharge of his functions, can sincerely and warmly advocate what he considers their rights, without the risk of subjecting himself to very serious personal loss, to the possibility of being made a victim of party misrepresentation and rancour; and that for a man to hold any judicial position, it is necessary for him to suppress and stifle his real and honest opinions.

Thanking your Lordship again, and very sincerely, for all your kind and flattering expressions towards myself, and for the permission to make what use I please of your letter—which, I presume, includes its publication, if necessary—and deeply regretting, for personal as well as more weighty reasons, that your Lordship should have felt it advisable and right to withhold the renewal of my appointment,

I am, my Lord,

Yours very truly and faithfully,

EDMOND BEALES.

The Right Hon. Sir A. E. Cockburn, Bart.,
Lord Chief Justice.

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THE JURIST.

LONDON, SEPTEMBER 8, 1866.

MR. E. BEALES is not only indiscreet in himself, but a cause that indiscretion is in other men. Whoever comes officially into contact with him straightway turns, if he was wise before, foolish, or, if he was already foolish, more foolish. Mr. Beales calls upon Mr. Walpole at his office on the matter of a proposed demonstration, or *reductio ad absurdum*, at Hyde Park, and incontinently that amiable gentleman takes leave of his wits, arrays himself in straw, and dives into the luminous depths of the other gentleman's mind to discover what may be passing there; and the last reports from the Home Office shew that he has not yet struggled back to common daylight. Mr. Beales has been thirty-six years at the bar, and, if we are not mistaken, much more than six years enlisted and under arms as a political partisan of extreme opinions. Being, then, in 1861, within the knowledge of all who had heard of him or who chose to inquire about him, as unfit to be a revising barrister as he now is on any ground assigned in the letter of the Lord Chief Justice, he applied for the office and obtained it from the very hand that now writes his dismissal—for dismissal it is. The ground and the only ground of dismissal given by Sir A. E. Cockburn is one which existed and was notorious when the appointment was first made. It is simply this:—That Mr. Beales, "holding what, in the view of many persons, would be deemed extreme opinions, and occupying a prominent position in the political warfare of the day," ought not to be "appointed to decide judicially on the claims of persons to vote in the election of members of Parliament." Such an appointment ought not to be made, because, although, in the opinion of the Lord Chief Justice, it would, in the vast majority of instances, be perfectly safe as regards the judicial conduct of the barrister appointed, his judgments would not be received with confidence by (save the mark!) the registration agents of the party whose politics are known to be distasteful to the judge. This is the sole reason assigned by his Lordship for depriving a gentleman, for whose integrity and personal character he professes the highest respect, of an appointment which is understood to be important to him, and which he has filled during five years without reproach.

"It would be vain to expect that the decisions of one deemed to be a strong political partisan, fresh from the heat and turmoil of political conflict, would carry with them that confidence which it is so essential that the administration of judicial functions should always inspire." Mr. Beales, therefore, is superseded, in order that some gentleman may be appointed in whose judgments all the suitors of his court may be expected to feel confidence. But the new judge will be a citizen and a barrister. In ancient Greece a citizen who abstained from taking a part in politics was held guilty of a crime; and in modern England the greek name for such an offender would not be deemed inap-

plicable, even in its secondary sense, to a barrister who having the necessary qualification, did not become a politician. Must a man be a political fainter or idiot, in order to be fit for the revising bench? Moderate views would, according to the new standard, disqualify him as much as extreme opinions; for he would be equally suspected by the extremes on either side. But, we shall be reminded, Mr. Beales is dismissed, not merely for holding extreme opinions, but for advocating them warmly—in short, for being in earnest, and shewing it. Certain disqualifications are prescribed by statute. If others are to be enacted by the judges, it is desirable that they should be clearly defined. What overt acts, since overt acts are an element, are sufficient to disqualify a barrister of three years' standing for the office? The Legislature has excluded members of Parliament and placeholders, and has made the revising barrister ineligible during eighteen months to represent in Parliament the district for which he has been appointed. It has not required him, on his appointment, to make oath that he has no political opinions; it has not prohibited his voting at elections, or attending political meetings, or writing in party newspapers. Are we to be seriously told, that men of the world, who know that every educated Englishman, and certainly every barrister, if he thinks at all, has a political bias, will distrust the decisions of a judge (who, *ex concessis*, is of irreproachable character) because he has given a pledge for watchfulness over his judicial conduct by publicly declaring the strength and the tendency of his political convictions? The revising barrister decides on questions of fact, without appeal; on questions of law, his decisions are subject to revision. If he strains his judgment in favour of his party, he does so either dishonestly, to ingratiate himself with his party, or honestly and unconsciously, according to his convictions. In the first case, his partisanship is necessarily patent, and would form a just ground for removal; in the other his bias cannot operate, except in the very few and therefore unimportant cases referred to by the Chief Justice, where the balance of evidence or of argument is even, or nearly so—cases which might as well be decided by chance as judicially. No honest conviction as to the expediency of manhood suffrage can be supposed to affect a lawyer's judgment on the question whether the yearly value of A. B.'s tenement amounts to 50*l.* or not, or whether C. D. holds his freehold for life or in fee. Accordingly, Mr. Beales, as he tells the Chief Justice, has always been complimented, and we have no doubt with perfect sincerity, by the Conservative agents, for his impartiality. Surely, the Chief Justice would have sufficiently considered the feelings of those susceptible gentlemen if he had waited for their complaints before he interfered on their behalf to deprive Mr. Beales of his modest preferment.

Undoubtedly, the public conduct of Mr. Beales since his reappointment in 1865, has been such as would have justified his exclusion from the office if he had now sought it for the first time. As a political agitator he has displayed ignorance of law, intolerance and contempt of authority and order to a degree quite

sufficient to inspire distrust in his fitness for judicial functions even of the lowest order. There is, however, a vital distinction between a refusal to appoint and a dismissal. The appointment of an untried candidate for office is necessarily made on general considerations of character, but the dismissal of an officer can only be justified on the ground of misconduct in the office itself, or such moral delinquency as amounts to a forfeiture of social rights. Although *à priori* it would have been fair to presume that the satisfactory revision of the lists of voters would require more sense, learning, and discretion than Mr. Beales appears to have at his command, the presumption is rebutted by the fact, that the lists have during five years been revised by that gentleman to the satisfaction, so far as appears, of all parties. He has shewn with how little wisdom the lists can be revised. It is hardly possible to doubt that the extreme folly and recklessness of the political agitation lately carried on by Mr. Beales, and not merely his "fervour of political zeal and championship of particular opinions," have provoked the Chief Justice to the course he has taken. We think the provocation did not amount to a justification, but at least it should have been noticed in the letter. Courtesy is ornamental and something more, but plain dealing is the first thing necessary when the reasons for an official act are in question. It is not for the public service that an officer should be dismissed on account of the gross impropriety of his conduct out of office, and be told at the same time that he is perfectly fit for the office if people could only be brought to think so. We say dismissed, because although the appointment is annual, it is always renewed in the absence of a special reason to the contrary, so that to "refrain from again appointing" is to dismiss.

Mr. Beales regards himself as a victim of party misrepresentation and rancour. Misrepresentation for party purposes is, in his case, quite unnecessary; his proportions, tried by any rational canon, are sufficiently grotesque without exaggeration; and, though we consider the recent proceeding of the Chief Justice to be unwise, harsh, and unjust, we cannot attribute it to the prompting of party rancour. His Lordship could not, on such an occasion, have forgotten the value of martyrdom to the cause in which it is suffered, and we have no doubt, that while he acted from a sense of duty, he was fully aware of the injurious political consequences of what he was doing. We should have been glad if Mr. Beales could have been punished directly and openly for his recent acts. As it is, he has not had fair play, and it would be satisfactory to all who are not affected by party rancour, and who object to *ex post facto* or "serve him right" legislation, if a Conservative Lord Chancellor could find some mode of exercising his patronage, without detriment to the public service, so as to make amends for the injustice which has been dealt by a Whig Chief Justice.

RE VIZARD'S TRUSTS.

THE decision of Sir J. Stuart in the case of *Vizard's Trusts*, on which we recently commented (*ante*, p. 319), has been confirmed by the Lords Justices, or rather has not been reversed by them, for Sir J. L. Knight Bruce differed in opinion from his colleague, though, according to his custom, he did not take the trouble to state the grounds of difference. The case on appeal is reported in 12 Jur., N. S., part 1, p. 680. In that case, property had been given by will upon trust for the testator's wife during her life, and after her decease, for all or such one or more of the children of the testator's deceased brothers, John and Charles Vizard, or

the issue of such of them as should be dead, and in such shares and for such interests as the testator's wife should by deed or will appoint; and in default of appointment, to such of the said children as should be living at the testator's death, in equal shares, per stirpes. F. Vizard, one of the children of Charles Vizard who survived the testator, executed a deed of assignment for the benefit of his creditors in the form set forth in Schedule (D.) to the Bankruptcy Act, 1861, which was duly registered. Nearly four years afterwards the widow died, having by her will appointed the property to the children of John and Charles Vizard in the same shares which they would have taken in default of appointment. It was held by the Vice-Chancellor, and on appeal by Sir G. J. Turner, L. J., though for different reasons, that the trustee under the deed of assignment has no title to the share of the insolvent. His Lordship said, "It was not contended that the mere possibility of interest which F. Vizard had at the time of the execution of the deed, in respect of his being one of the objects, could be considered to form part of his effects, or could be held to pass by the deed. *Carleton v. Leighton* (3 Mer. 667) is strong to shew that it could not; but it was insisted on the part of the appellant, that whatever F. Vizard took, he took under the will of the testator, and that the appointment did not displace or alter the interest which he took under the will in default of appointment, and which had passed to the appellant by the deed, the power being, as it was said, a power of selection only. I think, however, that the power in this case was something more than a power of selection; it was a power to distribute no less than to select, and it enabled an appointment to be made in favour of persons who would not take in default of appointment [the issue of children dying before the appointment]; and certainly I am not satisfied that the exercise of the power of appointment was not of itself sufficient to defeat the limitations in default of appointment contained in the testator's will; but it is not, in my opinion, necessary to decide this point, *inasmuch as I think that the interest of F. Vizard was altered by the exercise of the power*. Under the will of the testator, supposing the power not to have been exercised, he took upon the testator's death a vested interest in one-fifth of a moiety of the property in question; but, under the exercise of the power, his interest, as I apprehend, became contingent upon his surviving the widow; for, according to the case of *The Duke of Marlborough v. Lord Godolphin* (2 Ves. sen. 61), the dispositions made by the widow, though imported into the will of the testator, would take effect only at her death, and there would be a lapse, therefore, if he died in the widow's lifetime, although he had survived the testator. The mere fact of his having in the result survived the widow could not, as I apprehend, alter this."

With the most unfeigned respect for the very able judge whose words we have quoted, it is impossible to refrain from an expression of regret, that a case should have been decided upon reasoning so flimsy and beside the purpose. The real question before the Court was, whether, where an object of a limited power would take a share in default of appointment, he does not, at least to the extent of so much of the interest limited to him in default of appointment as in event is not appointed away, take, before appointment, a disposable interest, although it happens that his title in default of appointment is superfluously confirmed by the appointment. In every case of the kind the interest of the object of the power is contingent or rather defeasible until the time for an appointment to take effect has passed; and it is both inaccurate and trifling

to observe that, under an appointment by will, the appointee takes during the life of the appointor a contingent interest. He takes nothing by appointment until the will operates by the death of the testator. And we come back to the question, whether an assignment before appointment is defeated by a subsequent appointment which confirms the interest which was assigned.

It is not, we presume, denied that the general assignment in question was sufficient to pass all that would have passed if the insolvent had expressly assigned all his share and interest under his uncle's will, and the case must be taken as an authority for this proposition—that if F. Vizard had sold his share for value, and assigned it in the terms we have suggested, the assignment would have been defeated by his aunt's will if he survived her, but would have taken effect if he died before her (the original will containing, it is assumed, the ordinary hotchpot clause). To obtain so absurd a result it is necessary to resort to technical reasoning, and then to stop short of the result to which technical reasoning would lead. No technical rule is better established than this—that an appointment under a power is considered to be a graft on the instrument that created the power, so that the appointee takes as if the limitation in his favour had been contained in the original instrument. *Lord Godolphin's* case is quite consistent with this rule; it merely decided, as a point of construction, that an appointment by will must be read as contemplating those objects only who survive the testator. It did not decide that those who took, took otherwise than from the donor of the power. That case was cited in *Sweeting v. Sweeting* (17 Jur., part 1, p. 123), but was properly considered to be no authority against the conclusion then come to, in accordance with the well-known cases of *The Attorney-General v. Pickard* (3 M. & W. 552; 6 M. & W. 359); *Henniker v. The Attorney-General* (8 Exch. 258; 16 Jur., part 1, p. 1143); and *Stow v. Davenport* (5 B. & Ad. 359)—a conclusion directly opposed to the doctrine in *Vizard's Trusts*. The question in the case of *Sweeting v. Sweeting* was, whether legacy duty was payable, under the will of J. S., upon an annuity with which the testator authorised his son to charge

the devised real estate in favour of any woman whom he should marry, in bar of her dower, and which the son accordingly charged by deed. There was no attempt in that case to dispute that the instrument creating the power includes the appointment that is made under it. The contest turned wholly on the effect of the condition, that the appointment should be in bar of dower; and the Court held, that the duty must be paid on the footing of a direct gift from the testator to the appointee.

The case under consideration presented the absurdity of an assignment of a share being defeated by an appointment, which did not disturb the distribution that would have been made in default of appointment; and we have discussed it with reference to that circumstance. But our contention goes much further, and to the extent, that even where there is no limitation in default of appointment, the appointee under a power to appoint to him as a specially designated object, or one of a class of specially designated objects, takes immediately upon the creation of the power, or if he is not then in existence, upon his coming into existence, a contingent and assignable interest, which would pass on his bankruptcy, or under a general deed of assignment, to his assignees. No distinction for this purpose can at the present day be taken between a limitation to A. if he shall survive B., and a limitation to A. if B. shall so direct. The case of *Carlton v. Leighton*, cited by Lord Justice Turner, related to the expectancy of an heir apparent or presumptive, and has no bearing on a contingent interest under an express limitation.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Continued from p. 346).

The Masters' returns next shew the number of executions under the different forms of writs. The following were the numbers in each of the three courts in 1865, with the totals for the three courts in 1864, and the average of the totals for the five years 1859 to 1863, inclusive:—

	1865.				1864.	Average of Totals, 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	Total.	
Writs of fieri facias	6,095	4,752	8,293	19,140	17,876	17,138
„ capias ad satisfaciendum . . .	2,570	2,274	2,845	7,689	7,242	7,933
„ possession	159	113	153	425	415	479
„ elegit	71	33	71	175	170	115
„ exegi facias	22	—	14	36	57	51
„ capias utlagatum	3	—	—	3	14	10
Total executions	8,920	7,172	11,376	27,468	25,574	25,726

The judgments being subject to revision by the courts sitting in banco, on motions for new trials, or to enter or alter verdict, or for nonsuit, or arrest of judgment, or non obstante veredicto, the returns made by the Masters shew that there were applications of

this nature in each of the courts, with the following results, in 1865; the number of cases under each decision in the preceding year, and the average of five years, being stated for comparison:—

	1865.				1864.	Average of Totals, 1859-63.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	Total.	
Refused	31	36	28	95	128	114
Rule nisi granted	70	73	69	212	220	241
Rule absolute granted on payment of costs	14	2	1	17	8	102
Rule absolute granted without costs	18	23	22	63	92	
Rule absolute granted with question of costs reserved	7	1	—	8	10	
Rule discharged	17	40	34	97	108	107
Where court divided	—	1	3	4	2	3

A considerable increase has been shewn to have taken place in the number of writs of summons issued in 1865, and also in the appearances entered. In the proportion of the appearances entered the increase is greater still.

In 1864 the appearances entered were 26·6 per cent. of the number of writs of summons issued; in 1865 they were 28·3 per cent., being a higher proportion than in any of the preceding years. In 71·7 per cent. of the cases commenced in 1865, against 73·4 per cent. in 1864, therefore, the claims appear to have been settled without further proceedings than the issue of the writ of summons, except in so far as where judgment may have been obtained in default, of which cases the number appears to have been 4539, or one in eight of the appearances entered.

On the whole, it may be remarked that upwards of 119,000 cases occurred within the year, of sufficient importance to come within the jurisdiction of the superior courts, in which it was found necessary to have recourse to the law; while in less than one third of the number was any show of defence offered.

Of the 33,723 cases in which appearances were entered only 2956, or less than one in twelve, were entered for trial. Of the number entered for trial 1347, or little more than 1 per cent. of the cases commenced, were tried (this proportion being lower than in the preceding year), and of these 21 per cent. were undefended.

Testing the issue of the suits by the judgments obtained, the result is as follows:—The number of cases in which judgments were obtained in 1865, under the different forms of procedure, was, as already shewn, 38,440, leaving 80,657, or 67·7 per cent., as the number and proportion of the suits commenced in which no proceedings were taken beyond the writ of summons. Upon this calculation the proportion was the same in the preceding year.

For the enforcement of the judgments 27,468 writs of execution were issued under the different forms shewn above, or in the proportion of 71·4 per cent. of the cases. In 1864 this proportion was 69·9; in 1863, 70·4 per cent.

Of the writs in 1865, 69·6 per cent., against 69·1 in 1864, were to levy on the goods; 28 per cent., against 28·3 in 1864, were against the person; 1·5 against 1·6 per cent. in 1864, for possession after recovery in ejectment; the remainder under the different forms above shewn, with little variation in the proportions between the two years.

The number of remanets in each of the three courts at the commencement and at the end of the year, as shewn in the returns furnished by the associates, were as follows:—

	<i>Court of Queen's Bench.</i>	<i>Court of Common Pleas.</i>	<i>Court of Exche- quer.</i>
At the commencement of the year	95	197	16
At the end of the year	127	164	13

The returns furnished by the chamber clerks shew the business in the chambers of each of the judges of the three superior courts of common law. In the following summary, the totals of the proceedings in the chambers of the five judges of each court are given under the different headings for 1865, and the totals under each heading, for all the chambers; with the totals for 1864, and the average of the totals for the five years 1859–63. A comparison of the total shews a considerable increase in the number of the proceedings under almost every head in 1865.

<i>Proceedings.</i>	1865.				1864.	<i>Average of Totals, 1859–63.</i>
	<i>Queen's Bench.</i>	<i>Common Pleas.</i>	<i>Exchequer.</i>	<i>Total.</i>	<i>Total.</i>	
Summonses	11,603	19,879	21,339	52,821	41,123	43,546
Common orders	9,668	16,035	17,665	43,368	39,029	36,109
Special orders	3,438	5,753	5,438	14,629	11,353	11,094
Certificates, special cases, special verdicts, flats, &c.	845	563	416	1,824	1,908	1,937
Affidavits, affirmations, &c.	7,020	6,440	6,837	20,297	17,846	23,088
Affidavits filed	5,703	7,499	8,328	21,530	17,057	18,106
Approbations for taking affidavits or special bail	139	144	131	414	352	419
Acknowledgments by married women	1	332	62	395	369	519
Office copies (number of folios)	3,583	6,172	5,250	15,005	12,144	11,473
Recognisances	7	31	37	75	20	57
Writs of error	—	—	—	—	—	1
Bail	15	20	18	53	42	62
Committals	—	2	2	4	1	157
Exhibits before judge	1,535	1,641	1,713	4,889	3,818	4,069
Producing judge's notes	26	31	18	75	89	119
Bills of exceptions signed by judge	—	—	3	3	1	3
Attendances in any court on subpoena	—	—	3	3	1	10
Attendances as a commissioner to take affidavits	9	15	11	35	37	48
Reports on private bills	1	3	1	4	2	5
Attendances by counsel (each side)	980	2,152	2,040	5,152	3,804	3,839
Appointment of commissioners	171	165	118	454	290	497
Admissions	454	9	2	465	424	363
Summonses and order to try issue before sheriff	247	553	779	1,579	1,198	943
Allowances, bye-laws	—	1	—	1	3	4
Special commissions	—	128	—	128	272	214
Crown case (defendant)	—	—	—	—	—	—
Copying judge's notes	—	—	—	—	36	—
Other proceedings	3	5	3	11	1	—

The sittings in banco in the Court of Exchequer in the year 1865, relating to business on the revenue side of the court, are shewn, as in preceding years, in a return furnished by the Queen's Remembrancer, and were as follows viz.:—six motions in court, and sixty-nine motions (without argument) touching legacy and succession duties; one judgment on English information argued in 1864, the decree being for the Crown; and one special case, in which the decision was for the appellant.

On the 9th November the customary ceremony takes place of the presentation of the lord mayor of London to the barons of the Court of Exchequer; and on the morrow of St. Martin (12th November), on the assembling of the council in the Court of Exchequer, the nomination of the sheriffs for England and Wales takes place.

Returns of the proceedings into the court of error, Exchequer Chamber, have been made by the Masters of each of the three superior courts of common law, in the same form as the returns furnished by them for each of the last three years, and shew the proceedings from each court to have been as follows for 1865:—

	Queen's Bench.	Common Pleas.	Exchequer.	Total.
Writs of error allowed	—	—	—	—
Memoirandums of error lodged	13	14	13	40
Notices of appeal lodged	8	14	14	36
	21	28	27	76

Set down for argument:				
Errors	8	8	8	24
Appeals	8	4	13	25
Remanets from 1864	11	2	3	16
	27	14	24	65
How disposed of—				
Errors:				
Judgments affirmed	7	3	6	16
reversed	5	1	1	7
Stat processus entered	1	—	—	1
Venire de novo	—	—	—	—
Struck out	—	1	—	1
Standing for judgment	—	—	—	—
Appeals:				
Judgments affirmed	9	3	8	20
reversed	—	2	—	2
Venire de novo	—	—	—	—
Struck out	—	—	5	5
	22	10	20	52
Remanets and standing for judgment				
	5	4	4	13

The statements furnished by the Masters, shewing the receipts to the Suitors' Fund and the amount of fees levied, prove an increase in 1865, as compared with the preceding year, amounting with regard to the former to 21·4 per cent., and with regard to the latter to 7 per cent., following an increase of 41·6 per cent. in the receipts to the fund, and of 8·1 per cent. in the amount of fees levied in 1864, as compared with the amounts in 1863.

The following are the amounts for each of the courts, shewing the receipts and payments and the balances for 1865, with the totals, and the totals for the preceding year:—

Suitors' Fee Fund.	1865.				Total preceding Year.
	Queen's Bench.	Common Pleas.	Exchequer.	Total.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Amount of fund on 1st January, 1865 .	22,575 1 3	12,987 15 1	8,310 16 2	43,873 12 6	44,313 4 10
Amount paid in during the year . .	89,052 5 8	54,506 2 9	62,996 12 3	206,615 0 8	170,155 2 10
Total to 1st January, 1866 . .	111,627 6 11	67,553 17 10	71,307 8 5	250,488 13 2	214,468 7 8
Amount paid out during the year . .	78,755 7 5	43,243 12 7	56,755 16 11	178,754 16 11	170,694 15 2
Balance 1st January, 1866 . .	32,871 19 6	24,310 5 3	14,551 11 6	71,733 16 3	43,873 12 6
Fees levied by the common law Masters:					
Amount levied during the year 1865 ..	26,316 13 6	19,725 13 0	28,645 19 0	74,686 5 6	69,807 4 6
Amount disbursed for salaries, &c. . .	15,119 2 1	11,035 7 3	13,194 19 6	39,349 8 10	39,428 10 11
Balance 1st January, 1866	11,197 11 5	8,690 5 9	15,450 19 6	35,338 16 8	30,378 18 7

The following summary of returns presented to Parliament pursuant to the act 15 & 16 Vict. c. 73, shews for each of the years 1864 and 1865, the total amount of fees received in the superior courts of common law (inclusive of the fees levied by the Masters as shewn above) and in the office of the Queen's Remembrancer,

with the payments for salaries, pensions, and expenses, and for compensations, and the increase or decrease in the amounts for 1865, with the surplus or deficiency of the fees. From the commencement of the year 1866 these fees will be received in stamps:—

1864.		1865.		Increase.	Decrease.
£ s. d.		£ s. d.		£ s. d.	£ s. d.
Fees received	99,565 7 9	106,696 15 4	7,071 7 9		
Payments, viz.:					
Salaries, pensions, and expenses . }	77,042 0 3	78,253 1 10	311 1 7		
Compensations . . .	21,254 16 3	20,856 4 7			396 11 8
	99,196 16 6	99,109 6 5			
Surplus	368 11 3	7,527 8 11			

The proceedings in the county courts in the year 1865 for the recovery of debts, the proceedings under the Charitable Trusts Act of the 16 & 17 Vict. c. 137, and the proceedings under the act of the 20 & 21 Vict. c. 85, for the protection of wives deserted by their husbands, are stated in the table in the usual form for each of the fifty-nine county court circuits, as abstracted from the returns furnished by the county court treasurers. Cases in which decrees have been

given in county courts relative to probate and administration of wills appear in the returns furnished by the registrars of the District Courts of Probate.

In the following abstract are shewn the number of plaints in the whole of the county courts, and the totals under each heading in the returns with reference to the recovery of debts for the year 1865, in comparison with the numbers for the preceding year, and with the average of the five years 1859 to 1863, inclusive:—

	1865.	1864.	Average, 1859-63.
Total plaints entered (including the cases sent from the superior courts)	782,849	738,481	809,501
Causes determined:			
With a jury	823	838	910
Without a jury	433,160	401,334	428,279
	433,983	402,172	429,189
Judgments:			
For plaintiff	253,635	236,758	267,395
For plaintiff by consent or admission	163,161	147,855	167,993
For plaintiff by default	471	464	873
Nonsuit	8,364	8,440	9,324
For defendant	8,352	8,655	9,177
	433,983	402,172	474,762
Judgment summonses:			
Issued	88,835	76,613	120,987
Heard	47,226	42,398	57,851
Warrants of commitment:			
Issued	24,428	23,096	26,199
Debtors imprisoned	6,346	6,529	8,511
Executions against goods:			
Issued	133,589	124,804	119,755
Sales made	3,739	3,610	4,317
Total amount for which plaints entered	£1,847,110	£1,760,384	£1,990,957
On judgments obtained by plaintiffs on original hearings:			
Amount of debts	£926,602	£960,755	£954,156
Amount of costs	37,717	38,383	39,730
Total amount of fees on all proceedings	£257,875	£244,841	£250,708
Number of cases in which judgments were obtained:			
40s. and under	300,158	278,034	297,481
5l. and above 40s.	88,309	80,849	85,319
10l. " 5l.	30,257	28,840	30,875
20l. " 10l.	11,760	11,233	12,897
50l. " 20l.	3,486	3,405	3,967
By agreement above 50l.	13	11	—
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THE JURIST.

LONDON, SEPTEMBER 15, 1866.

OCCASION was recently taken in this journal to call attention to a branch of the law of watercourses, relating to the persons in whom the right to the use of a stream does or may reside. It is now proposed to examine another branch of the same subject, relating to the kind and mode of enjoyment which is permitted to a riparian owner; and it will, we think, be found that the judicial statements on this subject, though apparently clear and positive, cannot be considered as an adequate exposition of the law.

It will be convenient first to state what has been said in some cases as to riparian rights in general. In the case of *Bealey v. Shaw* (6 East, 214) it was laid down by Lord Ellenborough, that "the general rule of law as applied to this subject is, that (independent of any particular enjoyment used to be had by another) every man has a right to have the advantage of a flow of water in his own land without diminution or alteration."

It is to be observed that this states, in general terms, the right of every owner of land traversed by a watercourse to have the stream flow to his land in an *unaltered* condition; and from this it would strictly follow, that if, by the act of a higher owner, the condition of the stream as it enters the land of the lower owner is in any respect altered, a cause of action has arisen. It is further to be observed, that the statement takes no account of the mode of use of the stream by the lower owner; it is enough if the stream is altered by his neighbour above; and although, by turning the stream to artificial purposes, it may be rendered more valuable, and its use to the same extent more liable to interruption, yet it is conceivable that its utility merely in its natural condition, acting in and through its customary bed, may, by any mode of altering the stream, be in some degree affected. The conclusion above noticed as following from the dictum in the case of *Bealey v. Shaw* was stated, but with some hesitation, in *Mason v. Hill* (5 B. & Ad. 27), in these words:—"It must not be considered as clear that an occupier of land may not recover for the loss of the general benefit of the water, without a special use or special damage shewn." Here, the fact which was not taken account of in the citation from *Bealey v. Shaw* is noticed and referred to; the fact, namely, of the use to which the water is put by the acts of the landowner, as distinct from the natural benefits conferred by it; and the case intimates, contradicting the view acted upon in *Liggins v. Inge* (7 B. & Cr. 682), that the use to which the plaintiff may have put the water is immaterial, and that his right of action is founded on his right to have the flow *unaltered*. In *Sampson v. Hoddinott* (1 C. B., N. S., 590) it is laid down as follows:—"It appears to us, that all persons having land on the margin of a flowing stream have, by nature, certain rights to use the water of the stream, whether they exercise those rights or not; and that they may begin to exercise them whenever they will;

... if the user by the defendant has been beyond his natural right, it matters not how much the plaintiff has used the water, or whether he has used it at all; in either case his right has been equally invaded, and the action is maintainable. The question between the parties is thus reduced to this single point—has the defendant used the water as any riparian owner may use it, or has he gone beyond that?" Here, the fact of the plaintiff's artificial use of the stream is taken into consideration, and this right of use is made the basis of his right to have the flow unaltered; but the question is made to turn not on the actual, but the potential use, or the right to use. The stream is treated as something which the landowner, though he has no property in it, has a right to use as part of his interest in the land, and he has a right of action against any person who diminishes the value of his property by taking away the power of having this benefit in so ample a manner as he otherwise could. As against a higher owner, in fact, the lower owner is entitled to have the use of the stream for all possible purposes, though unlawful towards those having land still further down its course. For although in the case cited the plaintiff, in fact, appeared to have acquired, by immemorial usage, the right as against the lower owner to irrigate from the stream (which is a right that, it is conceded, does not, without special title, belong to a riparian owner), and it was of the interruption of this irrigation that he complained; yet in an action against the higher owner, this right was treated as immaterial with reference to him; for, since he was unaffected, in fact, by the user, he was not a person against whom it could create a prescriptive right in the lower owner to have the water for irrigation. The plaintiff's claim, therefore, depended on the general right to have the water for all purposes whatever, and the defendant's corresponding duty not to interfere with his use or capacity to use it; and it would equally have prevailed had his own act of irrigation been wrongful.

Having arrived at this point, let us return and notice that there are two things to be considered—the restraint and the enjoyment. The duty imposed on the higher owner not to interrupt or alter the stream in its passage to the lower land is not imposed for no purpose, but is founded on the fact, that it is useful to the lower owner to have the stream flow in its usual manner. The duty, therefore, might be expected to vary according to the use on which it is founded; that is, according to whether it is founded on the benefit conferred on the land by the mere flow of the stream in its natural condition, or on the benefit which may be obtained by an artificial use of it; for the right of enjoyment, that is, the legally protected use, ought to be the measure of the duty, that is, of the restraint, imposed by law for the purpose of this protection. If, then, any particular alteration would affect the artificial, but not the natural, use, it would or would not be an injury, according as the natural or the artificial use, or capability of use, was taken as the protected enjoyment. The case just cited makes the latter the test and measure of the duty, and treats every act as wrongful by which it is rendered impos-

sible for the lower owner to use the stream so beneficially as he otherwise could. In doing this, it so far treats the right to the water on the same footing as the right to the land; and as the owner of land, being entitled to use it in every possible way, has this privilege interfered with if another person without his consent uses it at all, so, having a right to use the water in its natural condition for all possible purposes, his right is violated if another person so acts as to deprive him of any portion of this possible use.

But to this general statement of the right and duty of the lower and higher owners, two qualifications may be imagined—First, it may be said that a limitation to the duty arises from the higher owner's right corresponding to the very right on which the duty is founded. As the lower owner has a right to the use of the stream, so has the higher owner also; and if every alteration in the stream were a wrong, the effect would be to take away all beneficial enjoyment of the stream from every one under the name of protecting it. Secondly, it may be said, that although the interruption of any actual use is not necessary to give a cause of action, but injury to the capacity of use is sufficient; yet it cannot be said that any injury is inflicted unless the act of the higher owner is such as *materially* to diminish that capacity of use. Both these limitations are noticed in *Embrey v. Owen* (6 Exch. 370):—"The owner must so use and apply the water as to work no material injury or annoyance to his neighbour below him. . . . It would be unreasonable and contrary to the universal sense of mankind, to debar every riparian proprietor from the application of the water to domestic, agricultural, and manufacturing purposes, provided the use of it be made under the limitations which have been mentioned; and there will, no doubt, inevitably be in the exercise of a perfect right to a use of the water, some evaporation and decrease of it, and some variations in the weight and velocity of the current. But *de minimis non curat lex*, and a right of action by the proprietor below would not necessarily flow from such consequences, but would depend upon the nature and extent of the complaint or injury, and the manner of using the water." And this is approved in *Northam v. Hurley* (1 El. & Bl. 673), where it is said, "We do not intend at all to limit the salutary principle laid down in *Embrey v. Owen*, to the effect that the superior riparian proprietors may use the stream for all reasonable purposes while in their land, provided they send it on without material diminution or alteration to inferior proprietors." This, then, relaxes, to some extent, the obligation of allowing the stream to flow unaltered, diminishes the right of having the stream flow unaltered, and in the same degree increases the real power of use. But what is the extent of the permitted use? By which of the above-mentioned tests is it to be determined? Is a fixed and stated use to be conceded to each owner, or is each owner's use to be limited by the condition that it shall be such as not to materially interfere with the equal rights of the lower owners? The statement which is, in fact, made on this point is compounded of both views; and it is upon this statement that vagueness and confusion are charged. The rule is laid down

with a great appearance of precision in *Minor v. Gilmour* (12 Moo. P. C. 156):—"By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land; for instance, to the reasonable use of the water for his domestic purposes, and for his cattle, and this without regard to the effect which such use may have, in case of deficiency, upon proprietors lower down the stream. But, further, he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided that he does not thereby interfere with the rights of other proprietors, either above or below him. Subject to this condition, he may dam up the stream for the purpose of a mill, or divert the water for the purpose of irrigation. But he has no right to interrupt the regular flow of the stream, if he thereby interferes with the lawful use of the water by other proprietors and inflicts upon them a sensible injury." We have here distinctly stated what had been elsewhere, and particularly in *Embrey v. Owen*, already expressed—a recognition of two kinds of use, an ordinary and an extraordinary one. With respect to what are called extraordinary uses, the statement is clear, and is agreeable to reason. No use at all by the higher owner is actionable if the effect upon the stream is inappreciable, or if no material alteration is effected by it. This is reasonable, because no actual damage is done, and because the fact that no sensible effect is or could be produced by the act makes it impossible that its repetition should give rise to a prescriptive right. The right to do injurious acts could not follow as a legal consequence from doing uninjurious acts; prescription must be not only from like acts to like acts, but from acts having like effects as towards the person to be affected by them, to other acts similarly affecting him. But, on the other hand, any extraordinary use is actionable if it produces a sensible effect or a material alteration, whether causing or not causing an actual present damage to the lower owner; for since its effect is sensible upon his property, the act is one the repetition of which may found a prescriptive right to do other acts producing a similar sensible effect; and this right once established would derogate from his right to have the water come on his land so as to be available for all purposes. But as he is not bound to use this right at any particular time, he ought to have the power of protecting the right by action, against the time when he may require to use it. With respect, however, to what are called the ordinary uses, the account is less satisfactory. What are they, and what is their limit? As to their enumeration, they are stated to be, use for domestic purposes, and use for cattle. With respect to their limit, it is thrown out with respect to one of these, at least, that no limit can be assigned. "No doubt (it is said), if the stream were only used by the riparian proprietor and his family, by drinking it, or for the supply for domestic purposes, no action would lie for this ordinary use of it; and it may be conceived, that if a field be covered with houses, the ordinary use by the inhabitants might sensibly diminish the stream; yet no action would, we apprehend, lie, any more than if the air was rendered less pure and healthy by the

increase of inhabitants in the neighbourhood, or by the smoke issuing from the chimneys of an increased number of houses." (*Wood v. Waud*, 3 Exch. 781). It may be noticed in passing, that the parallel drawn at the close of this passage cannot be accepted, for the true analogy of diffused air is not to water in a defined watercourse, but to percolating water. The right, however, as stated in *Miner v. Gilmour*, is not so large, but is limited by the condition, that the use must be a reasonable one. Now, it certainly appears highly unreasonable, that the owner of a mountain which borders by a rood's length on a stream flowing past it, should have the right of drying up the stream by watering at it all his herds of cattle feeding there; or that the owner of a portion of the margin should build a palace, and should absorb the whole water of it for objects of so wide a description as "domestic purposes." Assuming, then, that, in order to make an ordinary use lawful, it must be exercised within reasonable limits, the question remains, what are reasonable limits? Now, reasonable is *rationabilis*, according to some method of calculation. What, then, is the principle of adjustment or the standard of calculation, according to which this ordinary use is to be allotted? Now, it is plain the measure cannot be the extent of the riparian owner's occupation; whether it be taken with reference to his occupation of the margin alone, or of other land lying behind and occupied with the margin, or with reference to springs of water existing on such land, and either contributing to the stream, or making its use less necessary to him. For not only is there no authority for this method of distribution, but it would be obviously impossible to calculate according to it within the limits of ordinary convenience. Neither would it be consistent to apply this principle to ordinary uses alone, since upon the assumption (whether true or not) which would be the basis of it, viz. that the whole stream belonged to the entire number of riparian proprietors, the principle would be equally applicable to extraordinary uses. Neither would it agree with the common practice of the law, which is, not to measure the amount of enjoyment which a man may derive from his property by any definite intrinsic rule, but rather to confine it within the limits where it begins to interfere with the enjoyment of another, or where, on a general view of the object of property, that interference is of such a kind that it outweighs, as between the inconsistent enjoyments, the benefit which is acquired by it. Now, here a benefit is allowed to be taken by one at the nominal expense of another, on the principle, that if the right of each were not to some extent curtailed, the benefit of all would be debarred. The limit of a reasonable use is, that the co-riparian owner shall not be unreasonably inconvenienced; but it will probably be hard to find any other test of what is an unreasonable inconvenience to him, except that it is one materially and substantially affecting his capacity to use the object of the right. Now, what is his right? The positive part of it is to use the stream for all purposes. The negative limit is, that he shall not, in the exercise of this enjoyment, injure his neighbour. If, therefore, a riparian owner's capacity of using the stream, for any

purpose whatever, is materially interfered with by means of acts done by a co-riparian owner affecting the stream, it would seem that his right is injured, and that the co-riparian owner has exceeded his reasonable use. It is plain that if this rule were adopted, an end would be put to the distinction between ordinary and extraordinary uses; and this increase of simplicity is itself an argument in its favour. But it may be suggested that, preserving the distinction, the same principle may be applied thus; that the ordinary use of each owner may be limited by reference to the ordinary uses only of the others, and the extraordinary uses limited by reference to both ordinary and extraordinary uses; that ordinary use by a higher owner might be considered reasonable, which did not materially interfere with the ordinary use of any lower owner; that extraordinary use might be considered reasonable which did not materially interfere with any use or capacity of use whatsoever by the lower owner. This, however, besides the complication caused by the distinction of uses, would introduce further difficulties. Would only that ordinary use be an excess which interfered with *actual* ordinary use below? or, as every extraordinary use is excess, if it even interferes with the capacity of use of all kinds, would an ordinary use be in excess if it interfered with the capacity of ordinary use below? In the latter case, the difficulty would return in its full force, for by making injury to the capacity of *ordinary* use, and not of *any* use, the test, a sensible alteration would no longer be itself an evidence of excess. Since no act would be an injury, unless it so altered the stream as to disable the lower owner from some portion of his ordinary use, it would be necessary to discover the maximum of the reasonable ordinary use below, and that, and that only, which infringed this right of use, would be excess. Nothing, then, would be gained, for the reasonable use above would have to be ascertained by a previous knowledge of the reasonable use below. In the former case, that is, if an interference with an actual use were required to constitute excess, the reasoning of *Sampson v. Hoddinott* would be violated, to the effect, that the lower owner is entitled to use the stream when he will, is not bound to commence his use at any particular time, and is entitled in the meanwhile to maintain his right to his full use by action. Or else it would be necessary to say that his right would be preserved without action, that is, that it could not be prescribed against; or that, in other words, no length of time would suffice to establish a right to a more than reasonable use of an ordinary kind, although a right to an injurious extraordinary use might be acquired in derogation not only of extraordinary, but even of ordinary, uses below. On every ground, therefore, it would seem better and simpler to drop this distinction of kinds of use entirely, and to state the right of the riparian owner simply as a right to use the stream for all purposes, provided such use does not materially alter or diminish its flow. The difficulty no doubt still remains—what is a material alteration? But this is a difficulty inherent in the subject, which must be trusted to the fairness and common sense of the tribunal, whatever it may

be, which judges the question of fact, but which is certainly not escaped, under the present dynasty of cases.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Continued from p. 356).

In 1865 there were 15 appeals, against 10 in the preceding year, 15 in 1863, and 12 in 1862. There were 27 orders to stay proceedings, against 25 in 1864, 41 in 1863, and 47 in 1862. There were 70 cases of certiorari to remove proceedings, against 88 in 1864, 68 in 1863, and 81 in 1862.

The number of days of sitting during the year for the whole of the circuits was 7592, which, calculating on the number of causes determined, gives an average of 57.1 causes for each day of sitting. The number of days of sitting varies from 85 on circuit No. 5 to 280 on circuit No. 6. The average number of causes determined on each day of sitting varies from 20 on circuit 55 to 132 on circuit No. 5.

The number of plaintiffs entered shews an increase of 44,368, or 6 per cent., upon the number in 1864; but is less than the number in 1863 by 16,405, or upwards of 2 per cent.

The proportion borne by the number of causes determined in court to the total number of plaintiffs entered is 55.4 per cent., leaving 44.6 per cent. as the proportion of those settled out of court. Little variation appears in these proportions from year to year; in 1864 they were respectively 54.4 and 45.6 per cent.; in 1863, 55.3 and 44.7 per cent.

Of the judgments given 96.2 per cent., against 95.9 per cent. in 1864, were for the plaintiff; 1.9 per cent., against 2.1 per cent. in 1864, were nonsuits; 1.9 per cent., against 2.2 per cent. in 1864, were for the defendant. For 1863 these proportions were 95.9, 2.11, and 2 per cent. The number of debtors imprisoned gives one for 123 of the number of plaintiffs entered. For 1864 the proportion is one to 113; for the average of five years the proportion is one to 95.

The total amount for which plaintiffs were entered shews an increase of 86,726*l.*, or 5 per cent., above the amount in 1864, and of 83,617*l.* above the amount in 1863; but is less than the average for the five years 1859-63 by 83,847*l.*, or 4.3 per cent. The average for each plaintiff entered is 2*l.* 7*s.* 2*d.*

The amount of debts for which judgment was obtained is only half (50.2 per cent.) the total amount for which plaintiffs were entered. In 1864 the proportion was 55.7 per cent.

The amount of costs shews a continued decrease. The amount of fees was higher by 13,034*l.*, or 5.3 per cent., than the amount in 1864, but less by 5525*l.*, or upwards of 2 per cent., than in 1863.

The costs and fees together give an average of 13*s.* 7*d.* for each cause determined, against 14*s.* 1*d.* in the preceding year. For each of the years 1865 and 1864 the cases in which judgment was obtained for 40*s.* and under were 69.1 per cent. of the total number of cases determined.

Fifty-three warrants were issued for the arrest of absconding debtors, the number having been the same in the preceding year. In three cases bail was given in each of the years 1865 and 1864. In 12 cases in 1865, against seven in 1864, the debt and costs were paid; and six of the warrants in 1865, against seven in 1864, were suspended. Three matters were heard and three orders made under the Charitable Trusts Act, the numbers having been two in the preceding

year. Under the act of the 21 & 22 Vict. c. 85, protection orders to wives deserted by their husbands were registered in 470 cases; in seven cases the orders were discharged. In the preceding year 590 orders were registered. The number of orders in the five years 1859-63 gives an average of 599.

In 1864, in nine of the 33 local civil courts of ancient jurisdiction named in the table no proceedings took place. In seven of the same nine courts there were no proceedings in 1865; in the two remaining of the nine, viz. the borough court of pleas at Clitheroe and the borough court of Lancaster, there were three cases only; two at Clitheroe for the amount of 5*l.*, and one at Lancaster for 14*l.* The total number of proceedings commenced in the whole of these courts in 1865 was 27,194, against 28,411 in 1864, shewing a decrease of 1217, or 4.3 per cent., and following a decrease of 2376 in the two preceding years, as compared with the number in 1862.

The total amount for which proceedings were commenced in all the courts in 1865 was 308,800*l.*, being less than the amount in the preceding year by 63,080*l.*, or 16.9 per cent.

The total amount of debt for which judgment was obtained was 112,375*l.*, being less than the amount in the preceding year by 20,501*l.*, or 15.4 per cent.

The total amount of costs was 16,786*l.*, being less than the amount in the preceding year by 1153*l.*, or 6.4 per cent. The total amount of fees was 10,646*l.*, being less than the amount in 1864 by 401, or 3.6 per cent. The amount of costs and fees together was 24.4 per cent. of the amount of debt recovered. In 1864 it was 21.8; in 1843, 26; in 1862, 25 per cent. of the amount of debt recovered.

The proceedings in the Lord Mayor's Court of London are shewn in a return furnished by the registrar of the court in the usual form; the proceedings being distinguished under the heads of proceedings of the court in actions, and proceedings of the court in foreign attachment.

In the number of actions a continual increase appears. The number entered in 1865 was 5006, being an increase of 283, or almost 6 per cent., upon the number in 1864, following an increase in the preceding years respectively of 398, or 9.2 per cent., in 1864 upon the number in 1863; of 216, or 5.3 per cent., in 1863 upon the number in 1862; and of 179, or 4.5 per cent., in 1862 upon the number in 1861. There were also nine ejectments and nine apprentice petitions in 1865, against 11 and 10 in 1864.

The total amount for which actions are entered also shews an increase from year to year. The amount in 1865 was 125,451*l.*, being an increase of 1882*l.*, or 1.5 per cent., upon the amount for 1864, the increase for the three preceding years having been respectively 20,489*l.*, or 19.8 per cent., in 1864 upon the amount in 1863; 12,561*l.*, or 13.9 per cent., in 1863 upon the amount in 1862; and 10,435*l.*, or 13 per cent., in 1862 upon the amount in 1861.

Of the actions, 36, or 0.7 per cent., were for amounts under 5*l.*; 1401, or 28 per cent., for 5*l.* and under 10*l.*; 2164, or 43.3 per cent., for 10*l.* and under 20*l.*; and 1405, or 28 per cent., for 20*l.* and above.

Other proceedings of the court are shewn under the headings of orders to stay proceedings, judgments, verdicts, executions, certiorari, judgment summonses, and committals.

Under proceedings in foreign attachments, the number of attachments issued is stated to have been 945, being an increase of 61, or nearly 7 per cent., on the number in the preceding year, and following an increase of 184, or 26.3 per cent., in 1864 upon the number for 1863.

The amount for which attachments were issued was

1,257,427*l.*, being an increase of 515,722*l.*, or 69·5 per cent. upon the amount in 1864. Of these attachments 385, for a total amount of 397,838*l.*, were settled by the parties and withdrawn. The return further shews the number of verdicts and of judgments for plaintiff and for garnishee, and under bills of proof, the number of verdicts and of judgments for plaintiffs and for approvers, &c. The amount of fees on ordinary proceedings was 3561*l.*, being less by 1*l.* than in the preceding year. The amount on compensation cases, &c. was 294*l.* against 394*l.* in 1864.

Further, under proceedings on the equity side of the court there was one bill for specific performance, and one bill for partnership account.

The return furnished by the registrar of the court of the vice-warden of the stannaries shews the proceedings of the court in equity and common law, and for the winding up of incorporated and unincorporated companies under the Joint-stock Companies Act and the Companies Act, 1862, and proceedings not in any cause, during the year 1865.

The proceedings in equity are given for each of the counties of Cornwall and Devon, the totals shewing generally an increase as compared with those for the preceding year. The proceedings under the common law jurisdiction, extending only to the county of Cornwall, and few and unimportant in themselves, shew a great decrease.

In the proceedings for winding up companies, which apply to both counties, an increase appears generally in the number of the proceedings, and in a greater degree in the amounts affected.

Under proceedings not in any cause one case only appears in the county of Cornwall.

The details under each head, as given in the return, will be found stated in the table.

In the general return for the year ended the 11th October, 1865, framed by the chief registrar of the Court of Bankruptcy, and laid before Parliament, pursuant to the Bankruptcy Act, 1861, all matters, judicial and financial, within the act are shewn for the year. The matters stated in the return are given in the tables of the statistics in the same form for 1865 in which they have appeared for the preceding years.

The following, as taken from the tables, are the numbers of adjudications in bankruptcy under each form of procedure in each of the courts during the year:—

<i>Number of Adjudications of Bankruptcy.</i>	<i>London District Court.</i>	<i>Country District Courts.</i>	<i>County Courts.</i>	<i>Total.</i>
On petition of a creditor	293	309	78	789
On petition of the debtor	2062	1103	2772	5937
By registrars at the prisons	385	180	528	1091
On petitions in formâ pauperis	308	8	184	500
On judgment debtor summonses	6	2	—	8
Total	3063	1692	3560	8905

The total number shews an increase of 981, or 13·3 per cent., as compared with the total for 1864, but is less by 165 than the number in 1863. The increase in 1865 above the number in the preceding year extends to each form of procedure except judgment debtor summonses. In the number of adjudications on petition of a creditor it amounts to 174, or 29·2 per cent.; on petition of the debtor to 677, or 12·8 per cent.; in the number by registrars at the prisons to 187, or 20·6 per cent.; in the number on petitions in formâ pauperis to 44, or 9·6 per cent. In 1864 there were nine adjudications on judgment debtor summonses. It extends also to each of the courts, amounting for the London court to 742, or 32·1 per cent.; for the country district courts to 155, or 10 per cent.; and for the county courts to 184, or 5·4 per cent.

The number of adjudications where the debts exceeded, and the number where they did not exceed, 300*l.* were as follows:—

<i>Number of Adjudications.</i>	<i>London District Court.</i>	<i>Country District Courts.</i>	<i>County Courts.</i>	<i>Total.</i>
Where the debts of the bankrupt exceeded 300 <i>l.</i>	1870	1668	200	3738
Where they did not exceed 300 <i>l.</i>	1183	29	3360	4572

Of the former, the total number is in the proportion of 44·9 per cent. to the total number of adjudications; of the latter, of 55·1 per cent. In the preceding year these proportions were 41·1 and 58·9 per cent.

The total amount of gross produce realised from the several bankrupts' estates was as follows:—

	<i>London District Court.</i>	<i>Country District Courts.</i>	<i>County Courts.</i>	<i>Total.</i>
	<i>£ s. d.</i>	<i>£ s. d.</i>	<i>£ s. d.</i>	<i>£ s. d.</i>
Amount realised by creditors' assignees	215,877 17 3	308,148 19 1	5,466 3 0	524,486 19 4
Amount realised by official assignees	48,916 1 8	233,781 5 8	50,969 3 0	333,466 10 4
	264,895 18 11	535,924 4 9	56,835 6 0	856,955 9 8

In the total amount realised there is an increase of 179,419*l.*, or 26·4 per cent., upon the amount for the preceding year. In each of the courts an increase appears, amounting, for the London district court, to

17,561*l.*, or 7·1 per cent.; for the country district courts, to 159,279*l.*, or 42·1 per cent.; and for the county courts to 2580*l.*, or 48 per cent.

(To be continued).

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THE JURIST.

LONDON, SEPTEMBER 22, 1866.

WHEN a transaction takes place between two persons which the law pronounces to be illicit, but for which it provides no specific penalty, in what form does it express its censure, and what modes does it adopt for making its prohibition effectual? The common resource is, to pronounce the transaction void, which is as much as to say, that the acts which constitute it have no legal effect. But, as usually happens, when that formula is adopted, it is impossible to carry out the rule in a literal sense. There can scarcely be conceived any act done between two persons, except a purely executory contract, still remaining executory, which does not, by altering their relations of fact, inevitably alter in some degree their legal relations also; and it is plain, that in a class so extensive, and which includes such complicated matters as that of "illicit transactions," many cases must arise, where, to say that the dealing is void, affords no sufficient rule for deciding the rights which arise from such an alteration of fact. It is characteristic of almost all cases of this description, that the transaction is, in its main outlines, of a kind known to, and sanctioned by the law, but that it becomes illicit because of some condition, motive, or purpose, superadded to the legal framework. Suppose, for instance, that one person sells to another on credit, and delivers to him an article of use, knowing that it is purchased with the view and intention of effecting by means of it an illegal purpose; *prima facie* the transaction is an ordinary contract for sale, in which the property in the thing sold passes at once to the buyer, who in his turn becomes a debtor to the seller for its value. If this contract is pronounced void in consequence of the existence of the illegal purpose, so known to both parties as to make both participate in the offence; although by so calling it, it is implied that no legal effect attaches to the transaction, yet a difference in fact has been certainly made, which inevitably places the parties in different legal relations. The possession of the thing has been transferred, and is now vested in the buyer, who is not, however, placed by that fact under any obligation to pay for it. Is he under an obligation to return it, or to allow the seller to retake possession? If neither, is the seller entitled, when the opportunity offers, by any temporary vacancy of possession, to retake it? If the buyer is under an obligation to return it, or to permit its resumption, it follows that if he refuses to do or permit this, he is liable to an action at the suit of the seller; and this is the opinion of Martin, B., as expressed obiter in the recent case of *Pearce v. Brooks* (1 Law Rep., Ex., 217). In that case the plaintiffs sued for the hire of a brougham, which they had supplied to the defendant with a knowledge that she intended to use it for the purpose of prostitution. The Court held that they could not recover; and on the plaintiffs' counsel saying, "If the contract is void for this reason, the plaintiffs were entitled to resume possession,

and to bring trover for the carriage; a test, therefore, of the question will be, whether, in such an action, if the jury found the same verdict (as to the plaintiffs' knowledge) as they have found here, on the same evidence, the plaintiffs would be entitled to recover." Baron Martin replied, "I think they would; and that if the carriage had not been returned in this case, the plaintiffs would, on our discharging this rule, be entitled to determine the contract, on the ground of want of reciprocity, and to claim the return of the article."

If this is so, it proves that the right of possession remains in the seller, in spite of the apparent sale; and this in its turn proves that the property still remains in him, carrying with it the right to possession. If then the property remains in him, the right to possession is also his, wherever the thing may be, and he may vindicate his right against an innocent purchaser from the first buyer. The consequence is startling, but it seems to follow logically from the statement that the whole transaction, vitiated by the illicit addition, is absolutely void; which brings the matter very much to the condition of the old fiction of the action of trover; that the defendant found goods belonging to the plaintiff (that is, came somehow fortuitously into possession of them), and on demand refused to deliver them. The defendant, it may be said, has no legal cause of possession, and has, by no legal title, acquired property in the goods; for his vendor had no right to transfer; and the plaintiff, who once had both the possession and the property, though he has lost the former, has done no legal act to alienate the latter. Yet this is inconsistent with cases, which appear subject to the application of the same principles, where money has been paid for another in order to discharge an illegal bargain, or lent to him to enable him to accomplish it. In this case the opinion, that a person having so paid or lent money could not recover it from the borrower, or the person at whose request the payment had been made, was only established after some lapse of time, and in contradiction to the earlier cases. In *Failemy v. Reynous* (4 Burr. 2069) the plaintiff recovered on a bond, given him to secure repayment of money paid by him for the defendants, on an illegal stock bargain. In *Petrie v. Hamay* (3 T. R. 418) the plaintiffs' testator having paid to the broker the defendant's share of the differences on an illegal stock bargain, took the defendant's bill for the amount, which he discounted, and which, on its being afterwards dishonoured, the plaintiffs were obliged to pay. The plaintiffs then brought this action against the defendant for the amount, and against the opinion of Lord Kenyon, who sought (but, as was shewn by Buller, J., unsuccessfully) to distinguish the former case, on the ground that that action was upon a bond, the Court held that they could recover. The plaintiffs' right was plainly on the same footing as if no bill transaction had intervened, but the action had been brought directly to recover the amount paid by their testator; and it is so treated by the two judges who were most strongly in their favour, and who said, that on the authority of *Failemy v. Reynous*, if the broker himself had paid the differences for the defendant, he

could recover then. In *Steers v. Lashley* (6 T. R. 61), however, the defendant having given to his broker a bill for the amount of differences paid by the broker for him, the broker indorsed over the bill to the plaintiff, who had himself, as arbitrator, settled the amount due on that score to the broker, and who was, therefore, acquainted with its illegal origin. The bill being dishonoured, the plaintiff, as indorsee, brought an action on it against the defendant, and was nonsuited by Lord Kenyon, and the nonsuit was upheld by the Court, the Chief Justice saying that, if the plaintiff had lent money to the defendant to pay the differences, and taken the bill for that sum, then, according to the principle established in the cases already cited, he could have recovered upon it; but that here the bill was given for *those very differences*, and the broker could not, therefore, have enforced payment, nor, consequently, could the plaintiff, who took it with knowledge. This distinction, which is contrary to the views expressed by the other judges in *Petrie v. Hannay*, who admit that the broker could himself have recovered money paid for differences, is so extremely attenuated, that it more resembles the juggling effect given to a vouchee in an old real action than an application of the broad principles of jurisprudence on which such a question might be expected to turn, and it is evident that Lord Kenyon seized hold of this point of difference to evade the authority of the former cases, and to carry the rest of the Court with him in giving effect in that instance to his view of the subject. The same decision was made in *Brown v. Turner* (7 T. R. 630) against a plaintiff who was indorsee of an overdue bill, drawn by a broker on his employer for differences paid for him by the broker. In the analogous case of *Booth v. Hodgson* (6 T. R. 405), Lord Kenyon led the Court to deny the plaintiff's right to recover from the defendants sums received by them in the conduct of an illegal partnership with the plaintiff; and here Ashurst, J., directly contradicted the view expressed by the two judges in *Petrie v. Hannay* as to the power of the broker to recover money paid by him for differences. The converse case to *Booth v. Hodgson* was, in *Mitchell v. Cockburne* (2 H. Bl. 379), decided in the same way, and the plaintiff was held not entitled to recover from the defendant the share of sums paid by him in the business of a similar illegal partnership carried on with the defendants. Finally, in *Aubert v. Mase* (2 Bos. & P. 371), following the last case, an award was held bad so far as it included items of claim similar to those sued on in *Mitchell v. Cockburne*; Lord Eldon, C. J., saying, "the cases of *Steers v. Lashley* and *Brown v. Turner* stand in opposition to *Petrie v. Hannay*, *Falkney v. Reynous*, and *Watts v. Brooks* (3 Ves. jun. 312);" and Mr. Justice Heath pronouncing his opinion strongly in the same sense. Now, in those cases, what was sued for was money paid at the plaintiff's request in the performance, to the plaintiff's knowledge, of an illegal contract entered into by the defendant, and the result of the cases is, that such money cannot be recovered, or that no promise, express or implied, to repay it can be founded on, or supported by, the fact of payment. The original contract being illegal, any

act done with the view of assisting its fulfilment was illegal also, and therefore incapable of forming a legal cause or consideration for an express or implied promise. Together with the doctrine of these cases, there should be remembered the decisions, that neither money actually paid in pursuance of an illegal contract, nor money deposited with a 'person to be employed by him in an illegal adventure, can be recovered back. These cases evidently depend on the same principle.

Applying these rules and principles to the question under discussion, if, instead of the plaintiff and defendant being seller and buyer, the plaintiff had lent to the defendant money to be laid out for an illegal purpose, or had at the defendant's request knowingly paid for goods supplied for that end, it seems clear that he could not have recovered the money so paid, either from the borrower, or from the person who supplied the goods and received the payment, even supposing that person to have supplied them with knowledge. No legal promise, express or implied, could have been founded on an act which, being done to effect an illegal purpose, or to fulfil an illegal contract, would have been itself illegal. If, again, the seller of goods for an illegal purpose, had failed to deliver the goods, it seems clear that the buyer could not have maintained an action against him for non-delivery, for it is impossible that he should be compelled to deliver goods for which he could not afterwards legally demand the price; and besides, this follows necessarily from assuming that no valid contract was made. But, further, this would be the same if the price had actually been paid; for the same reason of illegality, neither could delivery of the goods have been compelled, nor could the money paid have been recovered. If a person cannot recover money paid to enable another person to do an illegal act, why should he recover money paid to enable himself to do a similar act? If, then, out of the transaction to which the case of *Pearce v. Brooks* referred, any right of action could arise at all, it seems that the only one would be that which was founded on a change of possession in fact, unaccompanied by a change of property, and derived from no legal origin. It is further plain, that this right of action depends entirely on the distinction between money and goods. Practically, there is no action for money, except one founded on contract; the claim is based, not on property in, nor on the right to the possession of, the specific coin; but no contract, express or implied, can be raised out of an illegal transaction; therefore the money of which possession is transferred in the course, or in consequence of such a transaction, can never be sued for at all; but as goods are sued for, not only in an action of contract, but in actions founded on property and possession, the right survives the transaction, which flows over it, and passes away, leaving no trace behind, except that, somehow fortuitously, the actual possession is not where it was before. But the two cases are in substance the same, and their relation to the illegality the same; they ought, therefore, it would seem, to be subject to the same rule; but, in fact, if the above-mentioned dictum is true, a totally

different result is reached by virtue of a rule that has no connexion with, or reference to, the common principle; and in the latter case the plaintiff is assisted to extricate himself from the loss caused by his illegal act, in the former that assistance is denied. It would seem more consonant with principle to refuse assistance entirely to one whose own illegal act has caused the difficulty, and that on the principle, that a suitor must have clean hands. And this is, in fact, the principle which rules in such cases, and is the simplest and most logical view of the subject. For if the Courts took upon themselves to unravel the whole transaction, and to arrange the rights of the parties according to their own notions of justice, and of the greater or less degree of delinquency in the different parties, they would undertake a task too intricate to be ever satisfactorily discharged, and that for the benefit of persons who, by their illegal (though *less culpable*) conduct, had certainly earned no title to peculiar consideration. The same observation applies, though with less force, to a mere attempt to reinstate the parties in their previous position; and accordingly this is never done by the Courts, except in the case of a statutory protection created for the benefit of one of them, and the discouragement and repression of the other. There they will further the intention of the Legislature by reinstating the party oppressed; but as to other cases, the rule is expressed by Lord Ellenborough in *Edgar v. Fowler* (3 East, 225), where, speaking of sums credited in account in an illegal transaction, he said, "If, indeed, this had been a legal transaction, the money might, perhaps, have been considered as paid. *But we will not assist an illegal transaction in any respect. We leave the matter as we find it; and then the maxim applies, melior est conditio possidentis.*" That is to say, the *prima facie* title given by possession is not allowed to be displaced, by shewing that it had its origin in an illegality to which the claimant was a party. But it must be observed, that the claimant's participation in the illegal transaction must be the direct and immediate cause of the possession. It would not be sufficient that the possession had been obtained merely in consequence of the transaction, and without the sanction of the claimant. The statement, therefore, amounts to this, that the claimant has been himself the author of an act which, valid in its general character, was illegal by the circumstances of its transaction. He is not at liberty himself to allege its illegal character; it, therefore, remains valid as against him, although it is incapable by reason of its illegal connexion, of giving him those rights which he expected to derive from it, and which would under ordinary circumstances follow. To treat the matter as one of want of reciprocity, or failure of consideration, seems inaccurate and insufficient, since it leaves out of sight the fact that the failure of consideration is caused by an illegality which vitiates the transaction by creating in every guilty party to it a disability to seek legal redress in respect of it. Perhaps the most correct way of solving the question would be, to consider that the plaintiff's act in parting with the goods, though void for the purpose of conferring upon him any legal rights against others, is valid as against himself, and, by depriving

him of his right to possession, leaves the goods in medio, to be acquired by the present holder of them, not by virtue of a transferred right, but under the title of first occupant of a vacant possession. This would avoid the difficulties suggested in the early part of this article, and would seem to be followed by no inconvenient consequences.

The question has been discussed hitherto with reference to a sale of goods; but it may be doubted how far the same reasoning would apply to the case of a loan of goods for an illegal purpose. No doubt the usual contract of the bailee would be prevented from arising by reason of the illegality; but whether the bailor would be altogether excluded from redress would depend (supposing the principle suggested above to be correct) on whether the Court refused to look at anything beyond the bare fact of possession, or whether they permitted an inquiry into the character of the legal act which the plaintiff had supposed himself to do. Now, in the case of a sale, he had intended to pass the property in perpetuity, and, as against him, he is held to have done so; but in the case of a loan, he only meant to give a temporary use; on the same principle, therefore, it would follow that he must be held to have given that temporary use; but it would not follow that he had lost the whole property in the thing, and, at the expiration of the time, he might be entitled to recover possession; and this seems the more probable opinion.

In conclusion, and as pertinent to the question which has been here discussed, the following observation is offered on the extent to which the character of illegality may attach to the sequel of an illegal transaction. In a book of high authority (Smith's L. C.), the case of *Fisher v. Bridges* is commented on and censured, as carrying the doctrine of the subject beyond its proper limits. A bond was there sued on, which was given for the purpose of securing payment of the purchase money of land sold for an illegal purpose, and the plaintiff was held not entitled to recover. The decision is quarrelled with, not on the ground that the sale for the illegal purpose ought not to have been considered as itself illegal, but on the ground that the bond was a distinct transaction. This comment has been retained through all the editions subsequent to the one in which it first appeared, but it has always appeared to us to be wanting in justice. What advantage would there be in condemning the original transaction, if the whole benefit of it could be secured by the juggle of making a substitutionary contract in a new form? A bond for the payment of money to be obtained by the medium of an illegal transaction, must be certainly subject to the same rule as the transaction itself; the debt secured by the bond is, in substance, identically the same debt which was before prevented from being a legal claim by the illegality of its origin, and must be struck by the same censure. The case is, in fact, precisely the same with that of *Falkney v. Raynolds*, which, while its authority reigned, was not supported on the ground that the bond was a distinct transaction, and the subsequent condemnation and overruling of which agrees with the decision in *Fisher v. Bridges*.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Continued from p. 363).

The number of adjudications, and the amounts realised by the official assignees in the several district courts, are stated, in a note to the return, as follows:—

	Number of Adjudications.	Amount realised by Official Assignees.
Birmingham district:		
Birmingham . . .	283	£57,719 12 6
Nottingham . . .	63	6,254 6 7
Bristol district . . .	175	7,894 0 0
Exeter district . . .	110	10,441 18 0
Leeds district:		
Leeds . . .	268	78,870 0 0
Hull . . .	52	11,142 19 10
Sheffield . . .	44	8,459 0 0
Liverpool district . . .	304	28,233 17 4
Manchester district . . .	303	20,929 0 0
Newcastle district . . .	90	2,843 10 9

At Birmingham, with a decrease of 19 in the number of adjudications, there is an increase of 42,470*l.* in the amount realised. At Nottingham the number of adjudications is the same as in the preceding year, with a decrease of 3988*l.* in the amount realised. In the Bristol district there is an increase of 13 in the number of adjudications, and of 1124*l.* in the amount realised. In the Exeter district an increase of 14 in the number of adjudications, with a decrease of 1644*l.* in the amount realised. At Leeds, with an increase of 22 in the number of adjudications, there is a decrease of 26,231 in the amount realised. At Hull there is an increase of five in the number of adjudications, and of 280*l.* in the amount realised. At Sheffield an increase of 18 in the number of adjudications, with a decrease of 3501*l.* in the amount realised. In the Liverpool district there is an increase respectively of 38, and 6030*l.*; in the Manchester district of 69, and 8968*l.* In the Newcastle district there is a decrease respectively of three, and 2857*l.*

The number of cases in which a dividend was made, and the number in which there was no dividend, are stated in the return, as follows:—

Number of Cases.	London District Court.	Country District Courts.	County Courts.	Total.
In which a dividend was made . . .	384	675	630	1689
In which there was no dividend . . .	2901	799	2027	5727

The cases in which there was a dividend are in the proportion of 28·6 per cent. to the cases in which there was no dividend. In the preceding year this proportion was 29·7 per cent.

The rates in the pound at which dividends were made were as follows, with the proportion per cent. of the number at each rate to the whole number.

Number of cases under 2 <i>s.</i> 6 <i>d.</i> . . .	861	..	52·5
" " 2 <i>s.</i> 6 <i>d.</i> and under 5 <i>s.</i> . . .	381	..	23·3
" " 5 <i>s.</i> " " 7 <i>s.</i> 6 <i>d.</i> . . .	200	..	12·2
" " 7 <i>s.</i> 6 <i>d.</i> " " 10 <i>s.</i> . . .	85	..	5·2
" " 10 <i>s.</i> " " 15 <i>s.</i> . . .	62	..	3·8
" " 15 <i>s.</i> " " 20 <i>s.</i> . . .	15	..	0·9
" " 20 <i>s.</i> . . .	35	..	2·1

The number of discharges granted, suspended, and refused, as stated in the return, was as follows:—

Number of Discharges.	London District Court.	Country District Courts.	County Courts.	Total.
Granted . . .	2234	1160	2682	6076
Suspended . . .	155	136	112	403
Refused . . .	1	17	89	107

The totals are respectively to the number of adjudications of bankruptcy made during the year in the proportions of 73·2, 4·8, and 1·3 per cent., 20·7 per cent. of the number of adjudications remaining. In the preceding year the discharges granted, suspended, and refused were respectively in the proportions of 73·8, 4·3, and 0·1 per cent. to the total number of adjudications. In 1863 the proportions were 80·2, 4·5, and 1·4 per cent. of the total number of adjudications; in 1862, 62·6, 5·4, and 1·6.

The number of trust deeds registered within the year under the 192nd section of the Bankruptcy Act, 1861, was 5204, being an increase of 1600, or 44·4 per cent., upon the number in the preceding year. Of these, 2733 were deeds of assignment, 2344 deeds of composition, and 127 deeds of inspectorship.

The stamp duty upon the deeds amounted to 22,588*l.*, shewing an increase of 13,083*l.*, or 137·6 per cent., upon the amount for the preceding year.

The gross value of estate and effects affected was 9,035,700*l.*, shewing an increase of 5,233,700*l.*, or the same percentage as with respect to the stamp duty.

The number of bills taxed in the Master's Office was 5135, shewing a decrease of 1013, or 17·7 per cent., as compared with the number for the preceding year, but exceeding the number in 1863 by 390, or 8·2 per cent.

The total gross amount of the bills taxed was 93,519*l.*, exceeding the amount in the preceding year by 6445*l.*, or 7·4 per cent.

The different amounts taxed were—

	£	s.	d.
Solicitors' bills	70,044	4	8
Messengers' bills	10,434	13	0
Assignees and others for travelling expenses, &c.	299	15	6
Auctioneers' bills	8,601	9	6
Accountants' bills	4,139	11	2
Amount struck off on taxation . . .	8,718	4	9

The amount struck off is 9·3 per cent. of the total gross amount of the bills taxed, being about the same proportion as in each of the preceding years.

There were 46 appeals; in 13 of which the judgments were affirmed, in 15 reversed; in one the judgment was varied; and 17 were pending, abandoned, or arranged. Under trust deeds there were 10 appeals; in six of which the judgments were affirmed; in one judgment was reversed; and three were pending, abandoned, or arranged. There was one appeal from a county court, which was pending.

The amount of fees received by the messengers for business done under the act, including deposits applied to the payment of bills, was 34,082*l.* 18*s.* 5*d.*, of which 14,980*l.* 18*s.* 1*d.* was by the messengers in London; 19,102*l.* 0*s.* 4*d.* by the messengers in the county district courts, the amount for each district court being stated in the table. The total payments amounted to 24,987*l.* 18*s.* 7*d.*, leaving a surplus of 9094*l.* 19*s.* 10*d.* The amount received is less than the amount for the preceding year by 413*l.* 16*s.* 9*d.*; the surplus exceeds the surplus of the preceding year by 720*l.* 1*s.* 3*d.*

The amount of deposits received in trust for bankrupts' estates was 20,486*l.* 1*s.*, of which 16,733*l.* 1*s.* 10*d.* was in the London court; 3752*l.* 1*s.* 2*d.* in the country district courts. The payments amounted to 12,833*l.* 1*s.* 4*d.*; 10,037*l.* 1*s.* 7*d.* in the London court, 2796*l.* 3*s.* 9*d.* in the district courts, leaving a balance applicable to the payment of costs, or to be returned to persons making the deposits, amounting to 7652*l.* 1*s.* 8*d.*; 6695*l.* 1*s.* 3*d.* in the London court, 956*l.* 17*s.* 5*d.* in the district courts.

The deposits received by the high bailiffs of the county courts in matters of bankruptcy amounted to 7658*l.* 1*s.* 1*d.*, of which 6644*l.* 3*s.* 5*d.* was returned or applied to payment of bills, leaving a balance of 1001*l.* 17*s.* 2*d.* in the hands of the bailiffs, the payments in two courts having exceeded the deposits by sums amounting together to 7*l.* 1*s.* 6*d.*

The fees in bankruptcy received by the registrars of county courts amounted to 11,918*l.*, being less than the amount in the preceding year by 259*l.* The total payments were 1399*l.*, leaving 10,519*l.* as the net remuneration of the registrars. In the preceding year the net remuneration amounted to 10,679*l.* The fees in bankruptcy received by the high bailiffs of the county courts amounted to 12,992*l.* The payments amounted to 7310*l.* The net remuneration was 5689*l.* In the preceding year the amount of fees was 12,816*l.*; the payments were 7217*l.*; the net remuneration was 5607*l.* (In both years the payments in certain of the courts exceeded the receipts).

The items of receipt and expenditure are stated in the return, the total receipts having amounted to 156,478*l.* 12*s.* 2*d.*, which is less than the amount for the preceding year by 20,337*l.* 4*s.* 7*d.* The payments amounted to 128,066*l.* 1*s.* 2*d.* An investment of 30,000*l.* was made in Consols to the credit of the chief registrar's account. In the preceding year there was an investment of 25,000*l.* The total amount of money

received by the Bank of England under the different accounts, as shewn in the return, was 958,666*l.* 8*s.* 7*d.* The total payments by the Bank were 953,459*l.* 1*s.* 5*d.* In the preceding year these amounts were respectively 762,068*l.* 3*s.* 6*d.* and 877,471*l.* 3*s.* 6*d.*

The cash and stock balances on the 11th October, 1865, under the different accounts, are shewn in the return, the totals being:—

	£	s.	d.
Cash	61,208	0	8
Exchequer bills	225,000	0	0
Stock	1,686,342	1	8
	1,973,150	1	11

In an appendix to the return are shewn the salaries, compensations, and retiring annuities of all the officers and persons connected with the Court of Bankruptcy, with all the expenses and payments on account of the London courts and offices, and each of the district courts.

For the High Court of Chancery the usual returns have been made by the different officers of the court, from which the proceedings in their respective offices and the amount and state of the business in each branch of the court may be seen, as well as the great value of the property dealt with.

In the return made by the registrars the proceedings awaiting a hearing at the commencement of the year, those set down during the year, those heard or otherwise disposed of during the year, and those awaiting a hearing at the end of the year, are shewn, the business in each of the three appellate courts and in each of the four original courts being distinguished.

In the following abstract the total number of the proceedings under each heading, for disposal, and disposed of, with the remanets, are shewn for each of the years 1865 and 1864, with the average of the totals for the five years preceding 1864:—

Nature of Proceedings.	For Hearing at the commencement of the Year.		Set down during the Year.		Heard during the Year.		Otherwise disposed of.		Remanet at the end of the Year.	
	1865.	1864.	1865.	1864.	1865.	1864.	1865.	1864.	1865.	1864.
Pleas	2	—	9	7	9	5	2	—	—	2
Demurrers	16	17	45	69	44	60	11	10	6	16
Exceptions to pleadings	2	4	17	20	13	20	3	2	3	2
Motions for decree	294	236	1064	1140	937	938	161	144	260	294
Causes	93	71	228	347	183	289	50	36	88	93
Special cases	8	1	21	25	19	16	1	2	9	8
Causes, claims, and causes and matters for further directions and further consideration	76	96	542	557	520	555	15	24	83	76
Rehearings and appeals	26	33	109	99	89	94	7	12	39	26
Appeal motions	10	11	71	82	75	76	1	7	5	10
Appeal petitions	4	1	18	16	16	13	—	—	6	4
Total	531	472	2124	2362	1905	2066	251	237	499	531
Average of totals, 1859-63	422		2131		1952		161		439	

A comparison of the totals shews a decrease of 179 in the number of the proceedings for hearing at the commencement of the year, and the number set down for hearing in 1865, taken together, and of 147 in the number heard or otherwise disposed of, 32; the difference between these numbers consequently representing the decrease in the number remaining for disposal at the end of the year.

The proportion borne by the number of proceedings disposed of to the number for disposal, viz. 81·3 per cent., was the same in each year. Compared with the average, both the number for disposal and the number disposed of were highest in 1865; the proportion borne by the number disposed of to the number for disposal was highest by 0·5 per cent. with regard to the average.

(To be continued.).

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THE JURIST.

LONDON, SEPTEMBER 29, 1866.

THE late case of *Fletcher v. Rylands* (12 Jur., N. S., part 1, p. 608; 1 Law Rep., Ex., 265), in which the Court of Exchequer Chamber reversed the decision of the majority of the Court of Exchequer, in conformity with the dissentient opinion in the court below of Baron Bramwell, is, both by the weight of its authority, and by the fundamental character of the principle of law involved in it, one of the most important of recent decisions. We shall, therefore, direct our readers' attention to it for a few minutes.

The case was, in substance, as follows:—The plaintiff was a mineowner; the defendants, who owned a mill, constructed a reservoir for their use on land separated from the plaintiff's colliery by intervening land. Mines had been formerly worked under the site of the reservoir, and under part of the intervening land; and the plaintiff had, by workings lawfully made by him in his own colliery and in the intervening land, opened an underground communication between his own colliery and the old workings under the reservoir. The defendants employed competent engineers and contractors for the purpose of making the reservoir, and it was not known to the defendants, nor to any person employed by them in its construction, that such communication existed, or that there were any old workings under its site. In making it, however, five old shafts were discovered, filled up with soil, which, though the fact was not suspected, led down to the old workings. The defendants were personally guilty of no negligence, but proper care and skill were not used by the persons they employed in providing against the danger caused by the shafts, and in making the reservoir capable of bearing the pressure of its full complement of water. The reservoir was in fact inadequate, and, on its being filled, the water burst down the old shafts, and, flowing by the underground communication, drowned the plaintiff's mine.

For the injury so done, the plaintiff sought to recover damages, and the majority of the Court of Exchequer (Pollock, C. B., and Martin, B.) having decided against him, contrary to the opinion of Bramwell, B., he carried the case to the Exchequer Chamber. The counsel for the defendants argued the case on the ground, that no one was liable for injury caused by acts done upon his land, unless, personally or by his servants, he was guilty of negligence; and he relied strongly upon the analogy of personal injuries, for which, he contended, a plaintiff could never recover without shewing negligence in the defendant. But the Court, agreeing with the plaintiff's contention, laid down the rule as follows:—"The person who for his own purposes brings on his land, and collects and keeps there, anything likely to do mischief, if it escapes, must keep it in at its peril, and, if he does not do so, is *prima facie* answerable for all the

damage which is the natural consequence of its escape." They added, "He can excuse himself by shewing that the escape was owing to the plaintiff's default; or, perhaps, that the escape was the consequence of *vis major*, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

It was also unnecessary to decide whether the same rule applied to personal injuries; but the Court could scarcely avoid considering it, and, after shortly reviewing that branch of the subject, they say, "It is believed that all the cases in which inevitable accident has been held an excuse for what *prima facie* was a trespass, can be explained on the same principle (as that applicable to accidents happening on highways), viz. that the circumstances were such as to shew that the plaintiff had taken that risk upon himself."

Upon this statement several observations occur. First, the ground upon which the non-liability of the author of an accident not coupled with negligence is placed, disposes of the doubt which has been sometimes made, whether, if the circumstances justified an action of trespass instead of an action on the case, the plaintiff could, under any circumstances, be compelled to prove negligence in the defendant, or the defendant be entitled to allege that the accident happened without any negligence on his part. The supposition that negligence is immaterial in such a case proceeds on the assumption, that a man is liable in all events for every act directly done by himself, or the result of his specific instructions, and which is injurious to another, who is not himself in fault, with the apparent exception of acts which are, in fact, not his acts at all, he being passive under the influence of some external force; though for acts only indirectly done by him, or done by those under his control, as the result only of general instructions or agency, he is not liable unless some negligence is shewn in himself or his agent. But the assumed distinction is, in fact, grounded on the forms of pleading; for the latter class of acts, a person would, without the action on the case for negligence, not have been liable at all. For the former, it may be said, he would always have been liable in trespass; but when his liability was extended to the latter class by the action on the case, the new liability was limited by requiring as its condition some negligence in himself or his agents; but this limit, though annexed to the added liability, was not, therefore, incorporated in or attached to the previous law as to trespass. Now, almost all the decided cases where the question of negligence has been discussed, and the more modern cases especially, have been cases which trespass could not have been brought, the injury not being the direct act of the defendant. And although in the judgment of the Court they are spoken of as cases of *trespass*, it is plain that the word is used in a general sense, with reference to the plaintiff's person or property being trespassed on, and not to the defendant's having himself done the act, and in such a manner as to include trespass on the case. With respect to cases of accidental injury occurring before the powers of amendment given by the Common-law Procedure Acts, it may be said, as to those on the case for negligence,

that by adopting that form of action in circumstances where the injury being the direct act of the defendant, the plaintiff might have sued in trespass, the plaintiff had taken upon himself to prove negligence in the defendant, so that no question as to the necessity of that proof could or did arise; as to those in trespass, that there was in these also no decision as to whether the absence of negligence on the defendant's part would exempt him from liability, but he failed by endeavouring to give exculpatory evidence under the general issue (as in *Hall v. Fearlay* (3 Q. B. 921)); or he sought to get rid of his liability, by shewing that the plaintiff ought to have sued in case, just as where the plaintiff sued in case, the defendant endeavoured to shew that he ought to have sued in trespass. But in those cases, both before the power of amendment was given, and since, where the question of negligence has been discussed and decided upon (if the cases relating to mischievous animals be excepted, a point to which we will afterwards return), the controversy has turned on whether there has been negligence, in fact, or negligence for which the defendant could be held responsible. Now, if *Fletcher v. Rylands* was a case of trespass (which on the authority of *Courtney v. Collett* (1 Ld. Raym. 272) it might perhaps be held to be, although it was not so declared upon), the Court might have evaded the analogy pressed upon them by saying, that the cases referred to were not cases of direct injury. If it was not a case of trespass, then, as the law now stands, the defendant may be liable where he has done no direct act of injury, and has been guilty of no negligence, so that the distinction is rendered futile. But the Court do not advert to the question of whether the injury was direct or indirect, but distinguish the cases cited, on the ground that the defendant must be held in those cases to have taken upon himself the risk of injury not caused by negligence. Now, this reason applies as fully to injuries caused by the direct act of the defendant as to those caused by him indirectly, or through a person for whom he is responsible. It may, therefore, be concluded, that under the circumstances mentioned by the Court, i. e. under any circumstances where the plaintiff can be held to have taken the risk upon himself, the defendant cannot be held liable even for acts directly done by him to the injury of the plaintiff, unless those acts are either wilful or negligent. Their dictum in substance amounts to this, that for any acts done by one person, which, by a natural consequence, cause injury to another, the doer is liable, unless the plaintiff is in fault, or unless, by virtue of some relation between the parties, or their common use of public property, necessarily involving risk, the plaintiff must be held to have taken the risk upon himself. And since the Court do not attempt to distinguish the cases of injury to real property from other cases of injury—since it is difficult to imagine any reason for the distinction, and no authority in law was produced in its favour—we shall for the present purpose assume that this statement of law is correct. Now, common sense, and convenience, and scientific method, are certainly in favour of this view; for whether the defendant is directly or indirectly the author of the injury, the loss to the plaintiff is in

either case the same; the plaintiff is in each case equally open to, or equally free from, moral blame, and the distinction of fact is one so obscure as to evade any clear conception. For, in the great days of technicality, the distinction between an injury directly and one indirectly caused was a perpetual subject of dispute. It is not equivalent to the modern distinction between proximate or probable consequences, and those which are not so; since for consequences which are not proximate or probable, no man is liable, even in respect of his acts of negligence, though it is admitted that he may be liable for consequences of his acts which are not direct. Yet direct injuries must be so called from the more or less immediate connexion of cause and effect, from the greater or less distance of time, the greater or less number and magnitude of the intervening causes by which the act and its consequences are separated; and it is on the very same consideration that the distinction of proximate and not proximate is founded. No doubt "direct" was originally supposed to mean "immediate," but when, as in *Gregory v. Piper* (9 B. & Cr. 591), the defendant was held liable in trespass for an act done by his servant by his direction, but in a mode contrary to his instructions, on the ground, that if the act directed were done, the consequences which actually followed, and which his instructions were intended to guard against, must inevitably follow, although it was not shewn that he knew of that necessary consequence; or when, as in *Courtney v. Collett* (1 Ld. Raym. 272), the unintentional overflow of a neighbour's land, in consequence of the defendant's erecting a dam upon his own, was held to be his direct act; or when, as in *Scott v. Shepherd* (2 W. Bl. 892), the defendant was held liable in trespass for the act of a third person, done under a sudden impulse which the defendant's act had caused; it became obvious that the word "direct" was one of flexible meaning, and the error of the pleader in *Sharrod v. The London and North-western Railway Company* (4 Exch. 580) might almost be held excusable. If the word does not differ at all in meaning from "proximate," it had better be rejected as a superfluity; and if it does, the distinction is so obscure as to make it unfit to be the foundation of a legal rule. So far, then, as concerns results of which the defendant's act was the originating cause, it is certainly an advantage not to be guided by this antiquated and uncertain distinction, out of which the Courts formerly sought to extricate themselves, by giving the aggrieved party liberty in every case, except that of wilful injury, to adopt, at his discretion, the less technical and rigid action on the case. So far as concerns acts done by persons for whom the defendant is responsible, it is immaterial to consider the matter, as such cases were excluded altogether from the class of trespasses strictly so called, except in cases where, as in *Gregory v. Piper*, the act was specifically directed. What meaning ought to be attached to the word "proximate," we propose to consider in the sequel.

But if, now, the rule above gathered from the judgment in *Fletcher v. Rylands* is correct, it follows, that when the defendant is sued in trespass for an act, free

from negligence, done by him on (for instance) the highway, and causing directly an injury to the plaintiff, he is entitled to defend himself upon these facts. But as the declaration states nothing about negligence, nor, we may suppose, anything about the highway, it must be necessary for the defendant to state these matters by plea; his plea, therefore, ought, it seems, to shew the circumstances creating the presumption that the plaintiff had taken upon himself the risk of injuries not caused by negligence, and to deny negligence in himself. This would be, in fact, doing what the Court suggested in *Weaver v. Ward* (Hob. 134), that the defendant should have "set forth the case, with the circumstances, so that it might have appeared to the Court that it had been inevitable, and that the defendant had committed no negligence to give occasion to the hurt;" but with this difference, that the plea must shew some circumstances raising the presumption that the plaintiff had taken upon himself the risk, and as that risk is limited to injuries not caused by negligence, must also negative the negligence.

Before leaving this branch of the subject, the inquiry suggests itself, what is the real value of the form of action called trespass. All acts causing injury to another, may be classified thus:—First, acts which the author of them does with wilfulness and malice, that is, knowing and meaning that they should be injurious. These are properly classed apart, for though malice may sometimes do no more than aggravate the damages recoverable, it may sometimes make that legally wrongful which would not otherwise be so. Secondly, acts causing injuries, but done without wilfulness or malice. These may be divided according as they are or are not meant to be done by their author. Now, on the one hand, some philosophers declare that no acts ought to be called voluntary except the actual bodily motions, though, indeed, even of these some are by no means in the most strict sense voluntary which appear to be such, that is, they are not the motions which are intended to be produced. On the other hand, it may be said, that whenever an ultimate purpose is in view, all things which are done for effecting that purpose are within its meaning; as, that the meaning and purpose of accomplishing a journey, is the meaning and purpose of every act done with a view to its accomplishment. But it is plain, that for legal purposes both these views are equally frivolous and irrelevant, and that we must have recourse to some more practical test; and though, from the nature of the case, no scientific precision can be attained, yet it may be defined with tolerable clearness what is the act which is meant to be accomplished, that is, what is within the entire present meaning of the agent. If a man wishes to cross the road, he may pull the rein and apply the whip, and he means and purposes to do each of these things, but practically his purpose is to cross the road. So, also, by crossing the road he purposes to reach the end of his journey, but that general purpose is to be carried out by a number of acts, each of which is accomplished by virtue of a distinct purpose of its own. Let that act, then, be taken to be intended by the agent, which is in a practical way within

his immediate present purpose, and that not to be intended, which, though in fact done by him, is not the thing that he wished to do. Injury, then, may be caused by one to another, either by the very act which he meant to do, or in the course of accomplishing it, or by the intended consequences of that act, which may be reckoned as a part of the act itself; or it may be caused by an act which he did not mean to do, though he voluntarily set in motion the causes of it, but, as in this case only, the very origin of the series was within his control, and the forces which were set in motion immediately escaped from his guidance, and contravened his purpose, only the first impetus can be considered within his intention, and all the rest is consequential; or, lastly, the injury may be caused by the unintended consequences of an intended act. This seems intelligible and tolerably accurate, but is it of any practical value? By the decision here commented on, all these alike will, in the absence of the circumstances alluded to in the judgment, give a right of action to the party injured against the author of the injury, if only (in case the injury is consequential), the consequence is a natural and probable one; in all alike if those circumstances are present, there is no liability in the absence of negligence in the defendant. Since, then, there is such a similarity in their legal effect, is the distinction of the form of action one useful to maintain, or would it not be more expedient that a difference of form should only be sanctioned where the added circumstance varied the legal liability? Wilfulness or malice does or may determine the existence of legal liability; it will constantly vary the extent of the compensation. But the directness or indirectness of the injury does not vary it; if the injury is not too remote a consequence of the act, the liability attaches; if it is too remote, the liability will never arise. In the first class of cases the question is, was the injury to the plaintiff caused by the defendant's act, and was that act done with the intention of injuring him; the latter being a distinct and material issue. In the second class, the only important inquiry is the first half of that question, viz. was the injury to the plaintiff so proximate a result of the defendant's action as to make the defendant the author of it; if it was not, there is an end of the matter; if it was, there also is an end; and of what advantage is it to pursue the obscure inquiry, whether within that limit the injurious act was more or less direct, or more or less intended? If any other division were made, it would seem more appropriate to construct it on the distinction laid down between cases where the plaintiff, taking a certain risk on himself, is bound to prove negligence in the defendant, and cases where that circumstance is absent. One reason against this would, doubtless, be, that those circumstances are too undefined to be readily classified, and that the result might only be a learned confusion, such as has often been caused by similar attempts.

The result, however, of the present state of pleading is, that with respect to injurious acts done by the defendant, a class which is really of a very marked character and distinct legal consequences, is joined with another class which has not that character or

those consequences; and further, that this latter class enjoys the privilege of being also sued upon in a different form of action, but is itself in legal consequences identical with the residue of the class belonging exclusively to that second form, and is separated from it, in fact, only by an uncertain and indefinite line. It is true, that forms of action are now of comparatively little consequence, but they still to a considerable degree govern our conceptions; and the word "trespass" still carries some magic in its sound. A third class of cases, in which a defendant may be made liable for injury suffered by the plaintiff, suggests itself; that, namely, where he is responsible by reason of his employment of the person whose act has caused the injury. This liability appears to involve a distinct principle of law, with various qualifications peculiar to itself, and, if we were to engage anew in the work of classification, would have some pretence to be the basis of a third class. Yet this claim would not stand on solid ground; for if the matter is examined, it will appear that, so far as a master is responsible for the acts of his servants, his liability is precisely the same in nature and degree as in the case of injuries caused by himself. The servant is only the means by which the injury is brought about; of the servant's action, the master's will is the originating cause, and the moment the servant forms an intention of his own, distinct from that employment in which his master has commissioned him, and proceeds to carry it out, his commission and his master's responsibility are both at once determined. The only new principle of law, therefore, which is applicable here, is that which lays down, that with respect to persons acting as servants, and under the control of another, the interposition of their power of voluntary action between the original commission of the master and their own acts is not so important a circumstance as to prevent the injury caused by those acts from being a proximate consequence of the master's act of direction. That is, the will of such persons, acting generally in their employment, is treated as no more constituting their acts independent of their master, than the will of a person acting under the specific direction of another prevents his acts from being the acts of the person so specifically directing. But whether a person is acting in the capacity of servant, is a question of fact. The question, therefore, of a master's liability in case of injuries done by a servant in the course of his employment is, in substance, the same as in the case of injuries done by the intervention of other means: that question will be—was the defendant the author of the injury by means of his servant? And the question consists of two parts—was the act of the servant the proximate cause of the

injury, and was he, in doing it, acting as servant to the defendant? Since, then, for this purpose, the injury caused by means of a servant stands on the same footing as injury caused by means of any other agent, animate or inanimate, under the control of the defendant, there is no reason for a difference in the form, beyond what is necessarily caused by the short statement of what was on the particular occasion the means of causing the injury.

Now, with respect to forms of action in general, where they are applied with strict technicality, and without any remedial power of amendment, they may almost be described as an unmitigated evil; but it is certainly convenient that the plaintiff's claim should be so far formal as to shew what in general is the nature of the injury complained of, and what is the general character of the blame imputed to the plaintiff, and of the evidence to be adduced. Having regard, then, to the law as it appears to be ascertained, if we might venture to suggest an outline of forms of action appropriate to injuries done to the plaintiff's person or property by the defendant's act, the following would seem to be the most methodical and accurate:—First, where the plaintiff complains of an injury done by the defendant, on the one hand without malice, and on the other hand without any circumstances raising the presumption of his having taken the risk on himself, he should allege the injury to be done *wrongfully*. Secondly, where he means to charge malice, he should state that it was done *maliciously*. Thirdly, where the injury was done under circumstances in which the plaintiff would be held to have taken on himself the risk of purely accidental injuries, and where he must, therefore, prove negligence on the part of the defendant, he should state that the defendant's act was *negligent*.

Finally, looking at the principal case in the light of the judgment now delivered, we would suggest whether the declaration might not have been sufficiently framed as follows:—That the plaintiff was possessed of coal mines in &c., and that the defendants were possessed of a reservoir situated in land lying near to the plaintiff's mines, in which they collected water, and that they wrongfully permitted the water to flow from the reservoir into the plaintiff's mines, whereby &c. Want of space compels us to postpone the other comments which we had proposed to offer on this case.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Continued from p. 371).

The registrars' return shews also the number of orders made in different matters as given in the following abstract for 1865, the numbers under each head being added for the preceding year and the average for the five years:—

	1865.	1864.	Average, 1860-63.
Orders made on the hearing of petitions under the Winding-up Acts	69	85	16
Orders made on the hearing of petitions of right	—	1	—
Orders made on the hearing of other petitions	2,669	2,731	2,458
Orders made on the hearing of special motions	1,085	1,138	1,059
Orders on summons, drawn up by the registrars	6,495	6,686	6,036
Orders on motions or petitions of course	581	595	533
Certificates for sale or transfer or delivery of stock or other securities	3,021	3,122	2,948
Amount of fees levied by stamps	£13,448	£13,630	£12,814

Under each of the foregoing heads a decrease appears in 1865, except in the orders on hearing of petitions under the Winding-up Acts, the number of which was, less one, double the number in 1864. As compared with the average of five years, there is an increase in 1865 under every head.

The return further shews the number of cases standing for judgment at the commencement and at the end of the year, which were respectively 14 and 9. In the preceding year these numbers were reversed. Five cases less, therefore, remained at the end of the year in 1865 than in 1864.

The number of days each of the judges sat in court, as shewn in the return, was as follows:—The Lord Chancellor, 79; the Lords Justices, 122; the Master of the Rolls, 150; the three Vice-Chancellors respectively, 171, 163, and 170. In 1864 the numbers were—the Lord Chancellor, 60; the Lord Justices, 148; the Master of the Rolls, 154; the three Vice-Chancellors, 167, 166, and 169. The total number of days was less in 1865 by nine. In neither year were there any sittings by the Lord Chancellor and Lords Justices. On filing his bill the plaintiff may select the branch of the court to which his suit is to be attached; but the Lord Chancellor has power to transfer any cause from the paper of any of the Vice-Chancellors to that of any other of the Vice-Chancellors; and the Lord Chan-

cellor and the Master of the Rolls can transfer any cause to or from the paper of any of the Vice-Chancellors from or to that of the Master of the Rolls. The number of causes, &c. thus transferred from each judge to other branches of the court was 115 in 1865, against 102 in 1864. The judges and the courts to and from which transferred are shewn in the return for 1865.

There was one cause tried with a jury, and one without a jury; one cause for trial with a jury, and one for trial without a jury, awaiting a hearing at the end of the year. There were 344 cases referred to the counsel of the court, against 367 in 1864.

The number of orders drawn up in the registrar's office was 12,231, and the total amount of fees collected thereon by stamps was 13,448*l.* 15*s.* In the preceding year the number of orders was 12,356; and the amount of fees 13,630*l.* 10*s.*

The total of the proceedings in the chambers of the Master of the Rolls, and of each of the three Vice-Chancellors, as shewn in the returns furnished by the respective chief clerks, were as follow for the year ended the 1st November, 1865, in comparison with the proceedings in 1864, and with the average of the totals for 1859–63.

The proceedings in each of the chambers separately for 1865 are given in the table:—

	1865.	1864.	Average, 1859–63.
Summonses to originate proceedings:			
For the administration of estates	453	409	410
Under the Charitable Trusts Acts	7	12	36
For appointment of guardians and maintenance of infants	145	120	138
For other purposes	181	124	130
	766	665	714
Other summonses	19,623	18,636	18,481
Orders made:			
Of the class drawn up by the registrars	7,028	7,061	6,543
Of the class drawn up in chambers	6,863	6,256	5,231
Orders brought into chambers for prosecution	1,869	1,998	1,931
Number of advertisements issued	971	1,012	906
Debts claimed and adjudicated upon:			
Number of debts	6,461	4,487	4,749
Amount of debts proved	£3,626,785	£1,056,103	£1,234,419
Accounts passed (other than receivers' accounts):			
Number of accounts	1,241	1,075	1,150
Receipts therein	£6,535,836	£5,421,873	£5,806,536
Disbursements and allowances therein	£5,994,379	£4,998,892	£5,363,671
Receivers' accounts passed:			
Number of accounts	566	515	539
Receipts therein	£2,117,349	£1,169,727	£1,995,407
Disbursements and allowances therein	£1,908,643	£286,602	£1,053,277
Sales of estates under orders of court:			
Number of sales	715	494	483
Amount realised	£1,747,339	£1,947,223	£1,456,080
Purchases of estates under orders of court:—			
Number of purchases	122	82	87
Number of contributories:—			
Included in list of contributories	1,447	2,800	1,854
Excluded from list of contributories	213	114	119
Orders for winding up companies:—			
Amount of calls made	£2,310,418	£614,153	£628,261
Total amount of fees levied by stamps	£11,570	£9,758	£10,129
Number of titles and other matters directed to be investigated by the conveyancing counsel	361	416	365
Number of certificates filed	2,307	2,240	2,312
Number of appointments (by summonses, adjournments, or otherwise) disposed of	46,996	43,842	40,063
Number of orders under which accounts and inquiries were pending at date of return	2,900	2,764	2,417
Number of orders for winding up companies then pending	176	113	107

(To be continued).

On the 20th September, at St. Barnabas, Kensington, by the Rev. A. Hunter Dunn, M.A., brother of the bride, assisted by the Rev. Francis Hessey, D.C.L., incumbent, N. Wedd Cooke, Esq., of No. 13, Addison-Gardens North, Kensington, and Raymond-buildings, Gray's-inn, eldest son of Nathaniel Cooke, Esq., of Ladbroke-terrace, Notting-hill, to Mary Anne, daughter of the late H. Dunn, Esq., of Northfleet, Kent. No cards sent.

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THE JURIST.

LONDON, OCTOBER 6, 1866.

PARTNERSHIP articles often fail to lay down a just and intelligible rule for the division of the partnership assets upon the expiration or dissolution of the partnership, where the partners have contributed to the capital in unequal proportions. Indeed, partnership articles are frequently settled without a distinct perception of the meaning of the words "capital," "assets," "joint-stock," "profits," and "losses." The capital of a partnership is the property in money or money's worth which has been brought in by the partners for the purpose of carrying on the business, and may be either fixed or variable, according to the agreement of the partners. The stock of the partnership at any given moment is the excess in value of all the property and credits of the partnership at that time over its debts and liabilities, and necessarily fluctuates from time to time. The difference between the value of the stock and the capital, if the balance is in favour of the stock, is profit; and if the balance is against the stock, is loss. The assets are the whole of the partnership property and credits for the time being. This is an elementary lesson in the meaning of familiar mercantile words; but it is frequently forgotten by the framers of partnership deeds, and the provisions of such deeds, with respect to the relative claims of the partners upon a division of the assets, and their respective liabilities to contribute to the discharge of the partnership debts, in case the assets are deficient, are in consequence often incomplete or obscure, and sometimes incorrect or contradictory.

Even in the most recent treatise on the law of partnership, and in that part of it which is devoted to the consideration "of the shares of the partners in the property of the partnership," we find the distinctions between capital, stock, assets, and profits thus confounded:—

"In treating of the shares of the partners in the property of the partnership, it is necessary to distinguish between capital and property. The property of the partnership consists of all that property of every kind which belongs to the partnership at any moment, irrespective of any of the liabilities of the partnership. Its capital is the amount of the residue of that property after all the liabilities of the partnership have been discharged. The property of a partnership may, therefore, be of the value of 100,000*l.*, whilst its capital is nothing." (Dixon on the Law of Partnership, p. 78).

Here Mr. Dixon uses capital to mean what is commonly called stock; and there would be no objection to that use of the word, if the author adhered to it and provided a substitute to express what is usually understood by capital, beyond that which may always be made to an unnecessary change of nomenclature. But Mr. Dixon proceeds as follows:—

"The capital of the partnership is originally made up of the contributions to the common stock of the several

partners; those contributions form the original capital of the respective partners. It is clear that any beneficial interest in the property of the partnership must be confined to the amount of the capital of the partnership as above defined. That capital must fluctuate in amount from day to day according as profits or losses are made in the course of the partnership business, and as the share of each partner in the profit and loss is not always in proportion to his original share of capital, it follows, that where it is not so, his share of the capital must fluctuate. Thus, if one partner brings in 10,000*l.*, and the other brings in nothing, and they agree to share profit and loss in equal proportions, when a profit of 1000*l.* is made the one will be entitled to 21-22nds of the capital and the other to 1-22nd, though originally the one was entitled to the whole of the capital, and the other to nothing." (P. 78). So far it is clear that "capital" is used to denote what is ordinarily meant by capital plus profits; but in p. 81 the author says, "Profits, however, are altogether distinct from capital, and the share of a partner in the profits does not determine or affect his share of the capital; they are the benefits derived from the business, and pass under the word 'business,' but not as the capital." When language is used so loosely, it is impossible that the difficult questions which may arise as to the relative rights of partners in respect of capital and profits can be adequately provided for or discussed.

In the recent case of *Wood v. Scoles* (12 Jur., N. S., part 1, p. 555; 1 Law Rep., Ch. App., 369) a question of this kind arose upon articles of partnership, which we think did provide a rule for its solution, though not in terms clear enough to prevent litigation. By the articles, the plaintiff and the defendant agreed to become partners in the business of coal and stone merchants, for the term of fourteen years from the 12th March, 1855, with power to either partner to determine the partnership on the 25th December, 1852, by notice.

By the 7th clause, the business was to be carried on "for the common benefit of the said partners, and risk of profit and loss in equal shares and proportions."

By clause 8, the capital to be brought into the business by Scoles was to be 1500*l.*, and the capital to be brought in by Wood was to be 750*l.*, and the capital of each partner was to carry interest at 5*l.* per cent.

By clause 9, "If either partner should, with the consent of the other, lend or bring into the said trade, in aid of the capital thereof, any money beyond the amount agreed to be brought in by him, he should be entitled to receive and take interest in respect thereof at 5*l.* per cent. per annum before any other payment of interest should be made." And either partner might withdraw, or require to be withdrawn, any surplus capital so brought in by either of them, on giving three months' notice.

By clause 10, each partner was allowed to draw out of his share of net profits 3*l.* per week, and a further sum of 50*l.* at the end of the year; the surplus of his share of profits to be left in the business at interest.

By clause 12, Wood was bound to devote the whole of his time to the business: Scoles was not.

By clause 21, on the determination of the partnership, an account was to be taken, and, after payment and discharge of all the partnership debts and liabilities, the remaining capital, stock, moneys, and credits belonging to the partnership "was to be divided by the partners, according to their respective shares or interests therein."

The partnership was determined on the 25th December, 1862, by notice given by Scoles. After payment of the partnership debts a balance remained. The capital standing to the credit of Wood was 830*l.*, and that standing to the credit of Scoles was 4124*l.*; the latter sum consisting partly of advances beyond the stipulated amount, and partly of accumulations of profits under the 10th clause. Scoles claimed to be entitled to the whole of the surplus assets, and to have a further sum paid to him by Wood, so as to equalise their losses of capital. This claim was founded on the terms of the 7th clause, providing that the partners were to share profit and loss equally. But the Court held that there was no express or implied guarantee by either partner of the other's share of capital; and that, each being entitled in the first instance to have his capital repaid out of the assets, the assets must be applied rateably for that purpose.

The Court of Appeal took a distinction between the amounts originally agreed to be contributed by the partners to the capital (including the accumulation of profits), and the sums voluntarily brought in by Scoles under the 9th clause, which sums being by that clause treated as debts bearing interest, to be paid in preference to interest on the stipulated contributions and capital, and being liable to withdrawal on notice, were considered by the Court as debts to be paid with interest in full, before any part of the assets could be applied towards the repayment of the capital, properly so called.

In the articles under consideration, the right of a partner to be repaid advances made by him in excess of his obligations, was defined with sufficient clearness; and the decision of the Master of the Rolls in respect of such advance, was properly reversed on appeal. But the relative rights of the partners in respect of their stipulated contributions of capital in case of a deficiency of assets was left to inference; and there can be no doubt, that if no other agreement is made, partners who have contributed capital in unequal shares, whether in pursuance of an express contract to contribute in such proportions or not, are entitled, on the determination of the partnership, to be repaid rateably, if the assets are not sufficient to pay them in full. But in no case, without an express and clear agreement to that effect, can one partner require his co-partner to make good a mere loss of capital.

The decision is more satisfactory than the reason given for it by the Master of the Rolls, and adopted by the Court of Appeal. The Lord Justice Turner, referring to the judgment of the Court below, said, "His Lordship's opinion, as I understand his judgment, was this:—that the 7th clause of the articles (providing that the risk of profit and loss was to be taken and borne by the partners in equal shares) was

meant to apply, and in fact applied, only during the continuance of the partnership, and the principal, if not the only question in this case, seems to me to be, whether the opinion was right or not. Upon considering the whole of these articles, the conclusion at which I have arrived is, that it is right. . . . During the continuance of the partnership, the plaintiff's larger share of the labour might well be set against the defendant's larger share of the capital, and the risk of profit and loss be therefore equally divided. But upon the determination of the partnership a new state of circumstances would arise, and new provisions might well be introduced for making it." It is not easy to understand this, or to see why the relative liabilities of the partners should suddenly change on the determination of the partnership. They were to contribute unequally to the capital, but they were to take the risk of profit and loss in equal proportions. Did this mean risk of loss of capital, or risk of liability beyond the capital? The Court has decided that it did not mean risk of loss of capital, for at the conclusion of the partnership it has apportioned that loss rateably, and as the capital could not be divided during the continuance of the partnership, the question could not previously arise. It meant, therefore, according to the judgment of the Court, risk of loss beyond the capital. To that loss the partners were to contribute equally, and there is no ground for saying that they were not to do so at the termination of the partnership as well as during its continuance.

In making up the accounts, whether of a continuing or of a dissolved concern, the outside debts are to be first provided for; then advances made by any partner, which by agreement or inference from circumstances are to be treated as loans to the partnership, and not contributions to capital; then the respective contributions of the partners to the capital, and the ultimate surplus is divisible as rent profits. If the partners have agreed to contribute and have actually contributed the capital in equal shares, and are entitled to divide the profits equally, no question can arise. The contributions of the partners in the form of capital and labour may, however, be unequal, while they are entitled to share the profits equally, which will be the case, notwithstanding inequality of contributions in capital or labour, if no other agreement is made. Now, if the partners contributed capital unequally, without any express agreement binding them so to contribute, it seems to be clear, that their first rights against the stock upon a distribution, are to a rateable repayment of their advances; and if the stock is not sufficient to pay them in full, he who has lost most has no claim to a contribution by the others personally; although if the assets were insufficient for the payment of the outside debts, the partners must contribute equally to make up the deficiency.

If, then (still assuming the absence of special provisions), a partnership business is carried on for several years without any balancing of accounts or division of profits, and is then determined, the first right of each partner is to have back his capital, and

only the surplus after such payment will be divisible as profits. But it may be that a loss has occurred upon the whole, although during the first year a considerable profit was made. In that case, it is conceived that a partner who has drawn out any part of the assets for his own use must refund them, although it is clear that a partner drawing out profits appearing to belong to him upon an annual or other settlement of accounts cannot be required to refund them, to make good capital lost in a subsequent year.

But if the partnership articles provide that the accounts shall be taken and balanced at stated periods, the question may be raised whether, if the partners neglect so to take and balance their accounts, their rights are to be determined according to the state of things existing when the account is actually taken, or according to what would have appeared if that had been done which was agreed to have been done. Thus, if A. contributes 10,000*l.* capital, and B. contributes nothing but labour, and it is agreed that the accounts shall be taken and balanced, and the profits divided annually, and a profit of 2000*l.* is made in the first year, and 2000*l.* are lost in the second year, the result would be, if the accounts were so taken, and the profits so divided, that at the close of the transaction A. would have lost 1000*l.*, and B. would have gained as much; but if the account were taken at the end of the first year, and the profits left in the business, then it is conceived that the 10,000*l.* remaining as stock would be

divided between the partners in the proportion of 21-22nd to A. and 1-22nd to B. On the other hand, if no account had been taken, B. could not, it seems, claim to be entitled to a share of profits left in the concern, but must submit to an account in which the early profits are effaced by the subsequent losses; for it was through his own neglect that his rights were not established; and it would be inconvenient and often impossible to ascertain what was the amount and value of the stock at a past time. (*See Guion v. Trask*, 1 De G., F., & J. 373).

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Continued from p. 379).

From the returns furnished to the chief clerks, to the Master of the Rolls, and to each of the Vice-Chancellors by the official managers or official liquidators of the several companies winding up in the respective chambers under the Joint-stock Companies Winding-up Acts, and forwarded to the Secretary of State by the chief clerks, it appears that there were 155 cases pending in the year ended the 1st November, 1865; in the preceding year the number shewn in the returns was 104.

The total numbers and amounts, as shewn in the returns for 1865, were as follows, in comparison with the numbers and amounts for the preceding year:—

	1865.	1864.
Contributories included in the list of contributories excluded	1,486	2,807
Debts claimed and adjudicated upon	214	114
Orders made	3,462	1,166
	474	577
The amount of calls made	£ 2,394,613 13 2	£ 614,153 7 3
Dividends ordered to be paid to creditors	912,227 0 7	440,820 5 1
Amount ordered to be refunded to contributories	30,645 11 3	63,996 9 2
Realised by sales	95,612 4 8	129,445 16 4
The receipts for the year were—		
On calls, or by way of compromise	495,295 17 9	115,744 13 9
Assets realised	1,123,995 17 7	367,015 15 0
The disbursements, including salaries or allowances, clerks' travelling expenses, &c., law expenses, auctioneers' and accountants' charges, and sundries, were—	79,287 13 11	40,292 17 7
Dividends paid to creditors	1,354,076 13 11	393,276 3 4
Amount refunded to contributories	70,355 0 5	53,894 10 7
Other payments	8,528 19 4	20,578 4 10
A balance remained available for future distribution amounting to	263,142 8 10	156,099 1 1

All suits instituted in the Court of Chancery, whether by bill or information, or by claim, or summons, or as special cases, as well as the various subsequent proceedings on the part both of plaintiff and defendant, requiring to be filed in the office of Records and Writs, the return furnished by the Clerks of Records and Writs shews the number of such suits and proceedings within the year. The return distinguishes the number of suits instituted in the court of the Master of the Rolls and in the courts of each of the three Vice-Chancellors. The total number of suits instituted in the four courts, as shewn in the return for 1865, was as follows, in comparison with the numbers for 1864, and with the average of the numbers for the five years 1859-63:—

	1865.	1864.	Average, 1859-63.
Suits instituted:—			
Bills or informations filed	2503	2280	2198
Claims filed under General Order of 1850	—	—	21
Special cases filed under act 14 Vict. c. 35	25	20	26
Administration summonses filed	462	337	416
Other originating summonses filed	326	269	307
	3316	2966	2968

Under each form of procedure an increase appears, the total increase in the number of suits in 1865

amounting to 350, or 11·8 per cent., on the number in 1864, the number for the latter year being less by two than the average. As compared with the number in 1863, the number in 1865 shews an increase of 239, or 7·7 per cent.

In the following abstract are given the total numbers of the proceedings under each of the different descriptions of suits, and the total amount of fees collected in the office by stamps, as shewn in the return for 1865, in comparison with the numbers and amounts for the preceding year, and with the average for the five years, shewing an increase of 268 in the number of proceedings in 1865 above the number in the preceding year, and of 6781, or 9·8 per cent. above the average.

The amount of fees shews an increase of 604*l.*, or upwards of 2 per cent., above the amount in 1864, and of 4103*l.*, or 17 per cent., above the average of the five years. The number of the proceedings in 1863 was considerably below the average, as was also the amount of fees.

	1865.	1864.	Average, 1859-63.
Proceedings in suits by bill or information	20,751	19,772	17,199
Proceedings in suits on claim	—	—	66
Proceedings in suits on summonses	1,180	907	1,054
Proceedings in special cases	36	25	43
General proceedings	54,802	54,797	50,626
	75,769	75,501	68,986

	1865.	1864.	Average, 1859-63.
Fees collected in the office by stamps	£28,185	27,581	24,802

The return furnished by the sworn clerks of the proceedings in the office of the examiners of the High Court of Chancery for the year ended the 2nd November, 1865, shews that the number of witnesses examined during the year was 329, being less by 90 than the number in the preceding year, and less by nine than the number in 1863. It is less by 50 than the average of the numbers for the five years 1859-63. The amount of fees collected (by stamps) was 221*l.* 2*s.*, which is less than the amount for the preceding year by 13*l.* 3*s.* It exceeds the amount for 1863 by 19*l.* 17*s.*, and is less than the average of the amounts for the five years by 15*l.* 18*s.*

The return furnished by the Lord Chancellor's principal secretary shews the proceedings in his office for the year commencing with the 2nd November, 1864, and ending with the 1st November, 1865. As compared with the year 1864, there was a decrease of 46 in the number of attendable petitions presented in 1865. As compared with the average of the numbers for the five years preceding 1864, there was an increase of 239 in the number for 1865.

The following are the numbers of attendable petitions under the different descriptions of proceedings in 1865 and 1864, with the average of the five years:—

	1865.	1864.	Average, 1859-63.
In causes	614	610	720
Under acts relating to railways and other public works	606	708	383
" the Trustee Acts of 1850 and 1852	213	220	242
" the Trustee Relief Acts 1847 and 1849	223	232	234
" the Leases and Sales of Settled Estates Act	66	59	47
" the acts relating to charities	7	1	7
" the Winding-up and Joint-stock Companies Act	47	33	19
" the Infants Settlement Act, 1855	11	15	11
In other general matters	316	276	203
	2103	2149	1865

Besides the foregoing, there were 14 petitions presented to the Lord Chancellor, in 1865, for orders of course, against 15 in the preceding year; the average of the five years being 13. There were also 7 letters missive in 1865, against 10 in 1864, and 6 the average of the five years; and 6 warrants in 1865, against 4 in 1864, and 4 the average of the five years. Of the petitions presented, 17 were for hearing before the Lord Chancellor, 129 before the Lords Justices, 472 before Vice-Chancellor Kindersley, 666 before Vice-Chancellor Stuart, and 819 before Vice-Chancellor Wood.

The amount of fees collected in the office by means of stamps was 1635*l.* 5*s.* against 1598*l.* in 1864, and 1494*l.*, the average of the five years.

The proceedings in the office of the secretary at the Rolls are shewn in a return furnished by the secretary of causes, also for the year commencing the 2nd November, 1864, and ending the 1st November, 1865. The number of petitions set down for hearing shews an increase of 10, as compared with the number in 1864, and of 89, as compared with the average of the five years. The following were the numbers of the petitions under the different descriptions of proceedings for each of the years 1865 and 1864, with the average of the numbers for the five preceding years:—

	1865.	1864.	Average, 1859-63.
In causes	272	286	348
In the acts relating to public charities	9	5	37
In the Trustee Acts	54	76	70
In the Trustee Relief Acts	118	102	93
In the Leases and Sales of Settled Estates Acts	36	18	29
In the acts relating to railways and other public works	226	227	98
In the Winding-up and Joint-stock Companies Act	90	42	12
In the Infants Settlement Act, 18 & 19 Vict. c. 43	5	18	5
In other matters	27	51	56
	837	827	748

There were also 3624 petitions for orders of course drawn up, against 3645 in 1864, and 3451, the average of the five years.

The amount of fees collected in the office of the secretary at the Rolls, by stamps, as shewn in the return, the amount collected at different rates on diffe-

rent proceedings being distinguished. The total amount was 2464*l.*, against 2366*l.* in 1864, and 2126*l.*, the average for the five years.

The business transacted for which no fees are now payable is stated in the return as follows for 1865, the numbers under each head being added for each of the four preceding years, for comparison.

	1865.	1864.	1863.	1862.	1861.
Caveats	77	69	75	59	55
Docquets	34	21	25	17	25
Recognisances vacated	64	76	80	82	104
Fiats upon certificates of aliens	294	333	251	261	271

	1865.	1864.	1863.	1862.	1861.
Fiats upon deeds for in- rolment	44	30	38	33	14
Office copies	135	157	173	143	137

The returns furnished by the Taxing Masters of the High Court of Chancery shew the number of orders and references for taxation brought into their respective offices, the number of bills taxed, and the number of certificates and allocations made by each Taxing Master. They shew, also, the amount of fees and the amount of costs, distinguishing the amounts on the lower and on the higher scales. These returns are for the year ended the 2nd November, 1865.

The following are the totals of the proceedings under the different headings in the offices of the seven Taxing Masters:—

	Orders and Re- ferences for Taxation.	Bills Taxed.	Certificates and Allocations made.
General business	2759	5814	2474
Taxation under the 6 & 7 Vict. c. 75, and under the Lands Clauses Consolidation Act, 1845	205	371	102
Taxations in lunacy	228	383	210
Taxations under requests from officers of other courts	86	126	73
Total proceedings	3278	6694	2859

Compared with the numbers for the preceding year, there is a decrease of 232, or 6·6 per cent., in the number of orders and references; of 516, or 7·1 per cent., in the number of bills taxed; and of 162, or 5·3 per cent., in the number of certificates and allocations made. As compared with the average of the numbers for the five years 1859–63, there is also a considerable decrease. The following are the average numbers, respectively, 3335, 7117, and 2916. In the amount of costs taxed, viz. 710,657*l.*, there is a decrease of 45,473*l.*, or 6 per cent. As compared with the average of the five years, the decrease is 17,082*l.*, or 2·3 per cent. The amount of fees also shews a decrease of 1508*l.*, or 6·5 per cent., as compared with the preceding year,

and of 1670*l.*, or 7·2 per cent., as compared with the average of the five years.

The return of the statistics of the duties performed in the office of the Masters in Lunacy, made by the chief clerk for the year ending the 1st November, 1865, shews a considerable variation, as compared with preceding years, in the number of orders of inquiry, reports, bonds, certificates, accounts, and affidavits, leases and other deeds, dealt with, and of summonses, as well as in the amounts of cash and stocks, of receipts and disbursements. The following are the numbers of the proceedings under each head, with the amounts of cash, &c., as shewn in the return for 1865, in comparison with the numbers and amounts for 1864, and with the average for the five preceding years:—

	1865.	1864.	Average, 1859–63.
Orders of inquiry in commissions of lunacy, executed by Mas- ters in Lunacy	80	87	63
Reports made to the Lord Chancellor	185	246	186
Bonds and recognisances taken as security for lunatics' estates	123	107	87
Certificates as to such securities	122	110	89
Certificates for investment of cash already in court belonging to lunatics	3	4	6
Certificates for payment of money, transfer of stock into court, investment of cash in court, &c.	172	145	125
Amount of cash included in such certificates	£193,086	£212,558	£181,282
Amount of stock included in such certificates	24,259	12,951	11,990
Amount of cash already in court directed to be invested	946	1,080	9,856
Certificates other than above	114	79	79
Accounts and affidavits of committees and receivers of lunatics' estates taken and passed by the Masters	328	258	251
Leases and other deeds settled and approved	145	119	172
Summonses for proceedings before the Masters	4,810	4,209	3,867
Amount of receipts in the accounts and affidavits of committees and receivers in lunacy passed during the year	£482,956	£470,443	£364,535
Amount of disbursements and allowances therein	402,513	385,612	314,137

The reports made to the Lord Chancellor by the Masters in Lunacy are stated in the return to comprise, amongst other matters, reports as to the property, kindred, and maintenance of the lunatics and their families, and the appointment of committees of their persons and estates; reports approving new com-

mittees of person or estate; reports fixing anew, or in any way varying, the maintenance or residence of the lunatics; reports as to granting leases and providing for the repair of the lunatics' estates; reports on miscellaneous matters. The certificates, other than as to securities, and the investment and payment of cash,

relate to the deposit and delivery out of deeds, wills, and other documents, the approval and allowance of leases, deeds, and various other matters incidental to the management of lunatics' estates. The accounts and affidavits of committees and receivers taken and passed by the Masters are stated to be exclusive of cases in which the Masters have been satisfied as to the due application of the incomes of lunatics by other evidence or explanation.

The proceedings in the office of the Registrar in Lunacy are given under the same heads in the return for the year ending the 1st November, 1865, as for the

preceding year, and shew a decrease in the number under each head, excepting certificates of the Masters filed. As compared with the average of the years 1860-63, there is an increase in 1865 under each head. The amounts of cash and stock dealt with in 1865, it will be seen, were in excess of the amounts in the preceding year, and generally of the average.

The following are the numbers of the proceedings under each head, and the amounts, as shewn in the return for 1865, with the numbers and amounts for 1864, and the average of the years 1860-63:—

	1865.	1864.	Average, 1860-63.
Petitions presented for hearing	136	166	161
Orders made for inquiries in lieu of commissions of lunacy	84	88	85
Other orders, including flats confirming Masters' reports	322	347	286
Number of orders made in pursuance of the Lunacy Regulation Act, 1862, for the application of properties of small amount for the maintenance of lunatics	21	23	—
Certificates of costs filed	197	242	147
Certificates of the Masters in Lunacy filed	430	353	290
Affidavits filed	884	1,046	869
Amount of cash directed to be paid into court	£58,326	£37,169	£42,909
ditto paid out	28,524	27,350	31,017
Amount of stock directed to be transferred into court	136,040	125,077	125,023
ditto directed to be sold and transferred out	456,354	288,970	244,316
Amount of stock directed by orders in lunacy to be transferred otherwise than into court	182,559	102,965	55,908

The registrar appends to his return the observation, that the amount of cash directed to be paid into court by the orders does not include the balances paid in by committees, nor any of the sums of money paid in by debtors, purchasers, and others, when the amounts are not mentioned in the orders, but have to be after-

wards ascertained and verified by affidavit; and that the amounts paid out do not include the payments out of the dividends to committees for maintenance, nor the amounts paid for costs, such amounts not being mentioned in the orders.

(To be continued).

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NOTICE.

The Office of THE JURIST is removed to No. 39, BELL YARD, TEMPLE BAR, W. C., where all communications for the Editor are requested to be addressed.

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THE JURIST.

LONDON, OCTOBER 13, 1866.

THE RIGHT OF PUBLIC MEETINGS.

WE have heard a great deal lately of the "right of public meeting," and it has been put very plainly by Mr. Bright at the recent reform meetings. It has been put boldly and plainly as the right of gathering together hundreds of thousands of men, and marching in procession to a place of assembly, not for the purpose of discussion, but, as he expressly said, for the purpose of "demonstration." That there might be no possible mistake, he went on to explain, that what he meant was, that their numbers might convey an idea of their determination, and of what they *might* do if their demands were not acceded to. And in language which approached as nearly as possible to actual incitement of sedition, he hinted that the exertion of popular force might well be excused by the denial of popular rights. And this way of putting it has, at all events, the merit of frankness. Not that it would have been much use to disguise the matter. No man of sense can suppose for an instant that a hundred thousand men were ever got together for the purpose of *discussion*, or for anything else but *demonstration*. And demonstration of what? Not merely of the physical force of numbers. The mere fact that a hundred thousand men are got together "demonstrates" nothing but their number. But the fact, that they are got together to *display* their numbers for the purpose of enforcing an acquiescence in their demands, is a demonstration indeed. But a demonstration of what? Simply of their readiness for rebellion. For if a hundred thousand men meet together to say, as Mr. Bright plainly said on their behalf, "You see our numbers; if you don't grant us what we demand, *beware of our numbers*:"—what is that but a *threat of rebellion*? And of what use can the assembling of a hundred thousand men be *but* to convey that threat? Their mere desire for a measure could be conveyed far better by petition. That would be the expression of their opinion. Their meeting together in vast numbers can be meant only as a demonstration of their determination, and of their force. But to threaten the Legislature with physical force, in order to compel a change of measures, and, still more, to coerce them to an organic change in the constitution, is more than sedition, and approaches very near to treason. So far from there being any *right* to convene such assemblies for the purpose of "demonstration," it is undoubtedly an indictable offence to do so, even *without* the design thus suggested. There is a right of public meeting for the purpose of *discussion*, provided the matter discussed be lawful, and provided there is no breach of the peace, nor violation of law and order, or the place or manner of meeting. But the right, like all others, is only to be exercised so far as it can *lawfully* be exercised. And in the first place, men must meet where they have a right to meet. They have no right to hold meetings anywhere, without

the express or implied license of the owner of the soil. For instance, they have no right to meet upon the highways, or in the places and thoroughfares of a town or city. Not on the highways, for it has been held again and again, that no one has a right to use a highway, except for the purpose of ordinary transit. Men have no right to collect in large numbers upon the highway, blocking it up, and obstructing it as they did around Hyde Park, and thus causing public confusion and disturbance. Neither have they a right to gather together in places of public recreation. But waiving these minor difficulties, or supposing that they have license from the owner of the soil to assemble, they by no means render their meeting lawful. That only purges it of *one* species of illegality—that lesser degree of it which consists in the disregard of the right of property. There is a far graver offence involved; it is that of endangering the public peace. No man has a right (as one of the police magistrates said) to assemble together in a mass all the scum and offscouring of a large city under the cover and disguise of a "popular demonstration." No man has a right, in short, to assemble a hundred thousand men for the purposes of a "demonstration." The law deems the assembly of such vast multitudes as illegal, from their serious tendency to disturb society. When a hundred thousand men are got together, no one can tell what they may do or not do. Such assemblages are not *meetings*: they are *mobs*; and all history tells us how dangerous mobs are. They are sure to contain a large proportion of the reckless and the worthless, who on such occasions are always ready for mischief, and likely to give one of those sudden impulses by which numerous masses of men are so easily led. No one can foresee what such mobs may do, and no one has a right to incur the risk, and put the public peace to such fearful peril. Some trifling provocation—some casual excitement, and this vast mob becomes a tremendous engine of mischief, which may in a few hours produce consequences one sickens to contemplate. We who write, and those who read these lines, are old enough to remember the disastrous riots at Bristol, and have read of those of Birmingham; and we shall never forget the terrible pictures we have had put before us of the Lord George Gordon riots, when half London was in flames. All these terrible disturbances arose in the simplest possible way; merely by getting large masses of people together. There are myriads in all large cities who eagerly swarm to such assemblages in the *hope* of a disturbance, and eagerly seize any chance of creating one. Every one knows this, and therefore no one has a right to gather such multitudes together; and any one who does so is doing an act wilfully illegal. All this has been established within the last twenty years in the criminal courts of England and Ireland. It was established in the Chartist trials. It was established in the trials of the Irish agitators. It was established, above all, in the case of O'Connell. (*Vide O'Connell v. Reg.*, 11 Cl. & Fin. 153). It is true, the indictment was held there too general, but there was no doubt as to the law. The offence for which he was tried, and of which he was convicted,

was that of exciting public terror and disturbing the public peace, by the assemblage of vast multitudes of men, and the indictment failed as a mere matter of pleading. His monster meetings were, it will be remembered, studiously peaceful. He studiously protested against any violence; in that respect far more cautious than Mr. Bright, who distinctly hints at it, as, at all events, a possible future measure, whereas the great Irish agitator always denounced it as criminal, and on that account he flattered himself that what he did was lawful; but it was not, and the House of Lords affirmed that it was not. The judgment was reversed upon grounds quite distinct from the merits, as we all know. The House of Lords never doubted that the offence committed *was* an offence against the law of this country; and since then, in *O'Connor's case*, it was not disputed, that to stir up the Queen's subjects to disaffection is an indictable offence. (*Reg. v. O'Connor*, 13 L. J., M. C., 33). If it were not so, it would be at the will of every popular agitator to keep this country constantly on the brink of a revolution, until one day, intentionally or unintentionally, *revolution came*, and overwhelmed the nation like a torrent. It will not do to live on the brink of a revolution, and the holding of monster meetings has been always the *beginning* of revolution. Vast assemblages of men are of no possible use except for the purpose of *threatening* revolution, and if they are allowed to continue *threatening* it, they will one day, by some accident, go a long way towards realising these threats. That in this country they could ever succeed, of course, we do not believe; but they would produce an immense amount of disaster to the nation and to themselves. No doubt, there is no *intention* of producing this mischief. Probably all that is meant is to produce just so much of public alarm and disquietude as shall enforce the passing of a popular measure. But, then, that is just what is illegal and criminal. It is illegal to attempt to coerce or intimidate Parliament or the Government in that way. The lawful and constitutional way of shewing popular desire for a measure is by petition. If the people are agreed in its favour, there is the less need for meeting to discuss it, and a hundred thousand men never *did* meet for discussion. If they meet for demonstration, it is in effect for intimidation, and that is illegal. Indeed, popular intimidation is the beginning of revolution, and the worst kind of revolution—*mob* revolution—which means anarchy, dissolution of society, and universal ruin. Men have no right to provoke such peril, or dally with such danger. It matters not what their intentions may be; if they take measures calculated to produce such peril, they are legally responsible for their acts, whatever the results; and even though no ill results actually arise, they are legally liable for the illegality of their acts. It is the *peril* of such results which makes the illegality, not their actual occurrence. The offence is the *endangering* the public peace, not its actual destruction—it is disturbance and disquietude by the presence of danger. The object, no doubt, is to *produce* that sense of danger, and that object is unlawful, and, in a legal and moral sense, it is criminal.

PROVISIONS FOR INSURANCE IN MORTGAGES.

WHEN a mortgagee stipulates that his mortgagor shall insure the mortgaged property from loss by fire, it seems to be a necessary inference that the mortgagee is to have the benefit of the insurance. In the case of *Lees v. Whiteley* (2 Law Rep., Eq., 143), however, the inference was not drawn from a stipulation of that kind. The question arose upon a mortgage by bill of sale of machinery in a mill, to secure 2298*l.* with interest, with a covenant by the mortgagors, that so long as any money remained due on the security, they would keep the machinery in repair, and insured from loss by fire in some good office, to be approved of by the mortgagee, in the sum of 2298*l.* at the least, and that in case they should make default in so insuring, the mortgagee might insure the machinery in that sum, and add the costs to the debt secured. An insurance was effected by the mortgagors to the amount of 3800*l.*, and the machinery having been destroyed by fire on the 16th June, 1864, the claim under the policy was agreed upon and fixed at 3175*l.* After the fire, but on the same day, the mortgagors executed an assignment of all their property for the benefit of their creditors, in the form set forth in Schedule (D.) to the Bankruptcy Act, 1861. This deed was also executed by the trustees, but not by any creditors. The landlord of the mill having threatened, after the fire, to distrain, the trustees of the deed put a bailiff into possession, and delivered the deed to him. On the following day one of the mortgagors obtained the deed from the bailiff, ran away with it, and dropped it, and it was picked up by another person and destroyed. In the month of August following the mortgagors were adjudged bankrupt; the act of bankruptcy being a distinct transaction. The mortgagee had notice of the trust deed on the 23rd June, and gave notice of his claim to the insurance office on the following day. The money due on the policy was paid into court; and Sir R. T. Kindersley, V. C., held that the mortgagee had no title to it, because he had not expressly contracted for it, and there was no necessary implication of such a contract from the stipulation for an insurance, because the existence of the insurance was obviously to some extent for the benefit of the mortgagee although there was no obligation on the mortgagors to apply the insurance moneys in a particular way, inasmuch as it was for the interest of the mortgagee that his mortgagors should be in a solvent condition. It seems to us, that this was a narrow and incorrect interpretation of the covenant. The mortgagors agreed that they would insure the machinery from loss by fire. It was not even said that they were to do this in their own names. What is the meaning of a covenant to insure goods from loss by fire? Not that the covenantor will take measures to prevent the goods from being destroyed or damaged by fire, but that he will purchase a contract to indemnify the owner or owners of the goods in case such loss or damage happens. If the goods are mortgaged, the owner of the goods is, primarily, the mortgagee, and, after satisfaction of the security, the mortgagor. It seems to us to be clear, therefore, that a contract in a mortgage to insure means an insurance for the indemnity of the mortgagee in the first instance; and even a stipulation that the insurance shall be in the mortgagor's name, cannot alter the construction. It is still a contract for an indemnity, and whether the promise to indemnify is made to the mortgagor or to the mortgagee can make no difference as to the application of the indemnity when it is realised. It is an indemnity against loss, and must be for the benefit of

those to whom the loss happens, and who have stipulated for the indemnity.

His Honor further held, that the mortgagee, even if entitled under the covenant, must fail, because, when he gave intimation of his claim to the insurance office, he had notice of the trust deed, which was an act of bankruptcy. It is difficult to understand this, inasmuch as the trust deed had not been registered, and so (pace Lord Westbury) could not be received in evidence.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Continued from p. 388).

The return furnished by the Accountant-General of the proceedings in his office for the year ended the 1st October, 1865, shews the amount of cash, securities, and other effects paid and transferred into court and out of court, and other proceedings in the office during the year.

The total amounts were—

Cash and securities—

Paid into court . . . £18,559,386 10 8

Paid out of court . . . 17,864,414 2 10

The following were the amounts for 1864, with the average of the amounts for the five years 1859–63:—

	1864.	Average, 1859–63.
Paid into court . . .	£20,906,892	16,176,748
Paid out of court . . .	19,542,385	15,096,767

The number of cheques signed was 45,544. The number of powers of attorney issued was 3,309. The total number of accounts was 26,721. For the preceding year these numbers were respectively 45,952, 3,328, and 26,215. The averages for the years 1859–63 are 42,178, 3,304, and 23,543.

The amount of cash, securities, and other effects carried over in the Accountant-General's book was 1,752,458*l.* 1*s.* 2*d.* For the preceding year the amount was 2,445,571*l.* 10*s.* 4*d.* The average of the five years is 2,117,130*l.*

The amount of fees collected by stamps was 650*l.* For the preceding year the amount was 682*l.* For the five years the average is 677*l.*

Description of Payment.

Compensation (including terminable salaries) in respect of abolished offices	
Salaries of officers	
Pensions to retired officers	
Rent, &c. of offices	
Expenses of copying in the offices	
Miscellaneous payments	

The following statement of the Sutors' Fund and the Sutors' Fee Fund is made from the annual account presented to Parliament by the Accountant-General under the 5 & 6 Vict. c. 5, s. 63:—

<i>Suitors' Fund.</i>		
Balance of cash on the 1st October, 1864 . . .	£21,004	9 3
Dividends of 4,222,676 <i>l.</i> 1 <i>s.</i> 10 <i>d.</i> stock . . .	123,761	14 7
Rent of Masters' offices let to Commissioners of Patents	520	0 0
Total income	145,286	3 10
Payments	£52,395	0 7
Carried over to Sutors' Fee Fund	72,498	1 2
Balance of cash on the 1st October, 1865 . . .	£20,393	2 1
<i>Suitors' Fee Fund.</i>		
Interest brought over during the year from Sutors' Fund	72,498	1 2
Interest brought over from "moneys arising by sale of the Six Clerks' Office"	44	11 6
Interest brought over from "moneys placed out to provide, &c." (stock purchased with surplus fees)	5,905	4 1
Brokerage paid in	8,251	9 2
Fees levied on the suitors	100,121	1 9
Paid in by the solicitor to the Sutors' Fund, received by him in respect of rent of chambers	87	13 2
Total income	186,908	0 10
Payments	160,752	19 4
Excess of income over payments for the year ending the 25th November, 1865	£26,155	1 6

The balance of cash to the credit of the Sutors' Fee Fund account on the 24th November, 1864 (the beginning of the year for which the return is made) was 113,152*l.* 14*s.* 11*d.*, and if to that amount there be added the above excess of income over payments for the year (26,155*l.* 1*s.* 6*d.*) there will result 139,307*l.* 16*s.* 5*d.*, which was the balance of cash to the credit of the Sutors' Fee Fund account" on the 24th November, 1865.

Analysis of the above payments, distinguishing those charged on each of the above two funds:—

Total.	<i>Suitors' Fund.</i>		<i>Suitors' Fee Fund.</i>	
£ s. d.	£	s. d.	£	s. d.
46,949 5 11	18,418	14 6	27,530	11 5
128,201 5 5	18,518	11 11	109,682	13 6
12,758 15 6	10,650	8 10	2,108	6 8
2,428 3 8			2,428	3 8
11,453 16 1			11,453	16 1
11,356 13 4	3,807	5 4	7,549	8 0
£913,147 19 11	£52,395	0 7	£160,752	19 4

In continuation of the information given last year, the Accountant-General has furnished the following statement, shewing the number of accounts in his books, and the balances of stocks, securities, and cash

in his name, and of the amount of cash remaining invested on account of the Sutors' Fund, and of the stock thereon, on the 1st October, 1865:—

Year.	Number of Accounts.	Balance of Stocks and Securities on the various Accounts.	Balance of Cash on the various Accounts.	Balance of Cash in the Bank.	Investments out of Sutors' Cash on Account of Sutors' Fund.	Stock purchased on account of Sutors' Fund.	Total Amount of Cash remaining invested on account of Sutors' Fund.	Total Amount of Stock purchased with Sutors' Cash.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1865	26,721	57,215,889 1 7	3,608,195 13 7	1,038,451 11 9			2,564,744 1 10	2,608,789 9 9

The proceedings in the Chancery Court of Lancashire are shewn in a return furnished by direction of the Vice-Chancellor of the county palatine of Lancaster for the year ended the 30th September, 1865, in the same form as for preceding years, the proceedings in each of the three districts of Liverpool, Manchester, and Preston being distinguished as usual. The totals of the proceedings for the three districts under each head, as shewn in the returns for 1865, are as follows,

in comparison with the totals for 1864, and with the average of the totals for the five years 1859-63 inclusive. As compared with 1864, there was a decrease of nearly one-fourth (23·4 per cent.) in the number of suits, &c. originated, and of 33·8 per cent. in the number of causes, &c. set down during the year: in other respects no great variation in the amount of business appears:—

	1865.	1864.	Average, 1859-63.
The number of suits and matters originated:—			
By bill	79	108	78
By claim	15	30	19
By summons	25	25	23
By special case, petition, &c.	35	48	40
	—154	—201	—160
The number of interrogatories filed	32	40	34
The number of answers and other defences	37	50	41
The number of causes and original matters on motions for decrees, claim, special case, petition, or otherwise:—			
Awaiting hearing at the commencement of the year	—	—	—
Set down during the year	86	131	111
Heard during the year	86	130	108
Otherwise disposed of	—	—	3
Awaiting hearing at the end of the year	—	—	—

The number of causes and original matter for further directions were—

Awaiting hearing at the commencement of the year	—	—	—
Set down during the year	51	30	39
Heard during the year	50	30	38
Otherwise disposed of	—	—	1
Awaiting hearing at the end of the year	1	—	—
Number of appeals:—			
Awaiting hearing at commencement of the year	—	2	—
Set down during the year	1	—	1
Heard during the year	1	2	—
The number of decrees and orders of each class, including those made by the registrar, amounted together to	571	529	500

The returns next shew:—

The number of affidavits filed	1,370	1,373	1,391
The number of witnesses examined	197	173	142
The number of reports and certificates filed	456	452	417
The number of warrants or summonses issued	1,490	1,419	1,257
The number of advertisements issued	66	60	59

The matters relating to money, bills and costs taxed, and fees were:—

Amount of debts proved	£29,292	£8,508	£21,452
Amount realised by sales of estates	£26,805	£28,609	£31,754
Number of bills of costs ordered to be taxed	253	235	211
Number of bills taxed	219	224	218
Amount of costs as taxed	£14,047	£16,847	£15,760
Amount paid or transferred into court:—			
Of stock	£4,104	£7,926	£10,724
Of cash	£107,935	£64,355	£93,186
Ditto out of court:—			
Of stock	£13,909	£84,922	£16,055
Of cash	£74,595	£80,409	£55,378
Amount of fees received:—			
For compensation fund	£909	£244	£236
General fees	£4,003	£3,900	£3,713

The proceedings in the High Court of Admiralty of England are shewn in the return furnished by the registrar of the court, in the same form for the year 1865 as for the preceding year, a separate return being given of the proceedings in the office of the marshal.

The number of causes pending at the commencement of the year and the number instituted during the year, with the amount at which the causes were

instituted under each class of proceedings, are shewn in the following abstract for each of the years 1865 and 1864, proving an increase of seven in the number of causes instituted in 1865, with a decrease of 446,735*l.*, or about 32 per cent., in the amount for which the causes, inclusive of those pending at the commencement of the year, were instituted:—

	1865.			1864.		
	<i>Causes pending at commencement of Year.</i>	<i>Causes instituted.</i>	<i>Amount at which Causes were entered.</i>	<i>Causes pending at commencement of Year.</i>	<i>Causes instituted.</i>	<i>Amount at which Causes were entered.</i>
Salvage	28	81	£166,050	26	77	£175,975
Damage by collision	79	210	490,050	84	219	340,030
Bottomry	11	24	67,300	10	24	26,150
Actions for necessities supplied to foreign ships	5	48	24,900	6	51	23,030
Towage	2	18	2,910	1	14	2,020
Wages	15	45	19,000	13	65	29,890
Pilotage	1	2	200	—	3	450
Possession	1	5	64,100	1	1	—
Other causes	27	68	134,250	23	40	757,950
Total	169	501	£906,760	144	494	£1,355,495
	670			638		

The average of the total number of causes, including the causes pending at the commencement of each year, for the five years 1859 to 1863 inclusive, exceeds the total number for 1865 by 12, or 1·8 per cent. The average of the total amounts for those years is less than the total amount for 1865 by 337,350*l.*, or 37 per cent.

The number of caveat warrants entered in 1865 was 85; in 1864, 69; in 1863, 67; in 1862, 59; in 1861, 52; in 1860, 41.

The caveat releases entered, and the appearances, both of which are set out in the return under each of the heads of salvage, &c., numbered in each year:—

	1865.	1864.	1863.	1862.	1861.	1860.
Caveat releases	48	56	29	26	36	54
Appearances	437	396	376	358	383	371

The numbers of judgments and decrees are also given under each head. The total numbers, and the terms under which the judgments were made, in each of the years 1865 and 1864, with the average of the numbers for 1859–63, were—

	1865.	1864.	Average, 1859–63.
Final judgments in contested causes:—			
For plaintiff	108	99	109
For defendant	22	30	34
Decree in causes by default			
Incidental decrees in contested causes	28	16	46
Decrees in “in pœnam” causes			
	158	145	189

The total number of motions and of summonses heard, the number under each head being given in the table for 1865, was for each year:—

	1865.	1864.	1863.	1862.	1861.	1860.
Motions in court	91	106	141	116	107	125
Motions in chambers	944	996	249	182	139	46
Summonses heard	—	—	1	24	54	72
	435	406	391	322	290	243

Under references to registrar and merchants, 65 causes are given as heard and reported on by the registrar in 1865; in 1864 the number was 53; in 1863 it was 38; in 1862, 52; in 1861, 37.

The total amount of the accounts investigated in 1865 was 113,446*l.* 18*s.* 7*d.*, of which 16,459*l.* 14*s.* 3*d.* was disallowed, leaving 96,987*l.* 4*s.* 4*d.* as the amount found due. In 1864 these amounts were respectively 109,789*l.* 5*s.* 10*d.* submitted, 14,683*l.* 6*s.* disallowed, and 95,105*l.* 19*s.* 10*d.* found due.

The total number of bills taxed in 1865 was 211, the number under each head being distinguished in the table; in 1864 the number was 229; in 1863 it was 239; in 1862, 202; in 1861, 242; in 1860, 212.

The total amount of costs, the amount under each of the heads of salvage, damage by collision, bottomry, &c., being distinguished in the table, was as follows for each of the years 1865 and 1864, with the average of the five years 1859–63:—

	1865.			1864.			Average, 1859–63.		
In “in pœnam” causes:—	£	s.	d.	£	s.	d.	£	s.	d.
Proctors' or solicitors' bills submitted	585	7	4	481	6	2	1,507	1	7
Amount disallowed	78	13	8	65	14	0	427	8	0
Found due	446	13	8	415	12	2	1,079	13	7
Agents' out-port charges:—									
Submitted	93	9	5	97	14	6	153	6	2
Allowed	38	13	9	52	1	1	106	12	2
Plaintiffs' costs in contested causes:—									
Proctors' or solicitors' bills submitted	14,008	17	11	14,932	7	6	14,538	8	8
Disallowed	8,068	0	8	3,272	9	6	3,163	15	11
Found due	10,950	17	3	11,659	18	0	11,379	12	9

Agents' out-port charges:—

Submitted	£4,295 8 11	4,643 11 6	4,153 12 5
Allowed as against defendants	2,015 10 0	2,403 4 10	2,002 10 2
Defendants' costs in contested causes:—			
Proctors' or solicitors' bills submitted	3,801 3 5	6,050 4 5	3,565 0 2
Disallowed	1,246 14 3	1,528 14 9	934 9 6
Found due	2,554 9 2	4,521 9 8	2,630 10 8
Agents' out-port charges:—			
Submitted	1,602 12 8	1,617 4 0	1,124 7 2
Allowed as against plaintiffs	452 18 10	846 1 6	539 17 9

The total amount of Admiralty proctors' costs was:—

	In 1865.	In 1864.	In 1863.	In 1862.	In 1861.
Submitted	£311 3 9	£558 4 4	£532 1 11	£390 17 8	£130 15 9
Disallowed	5 15 8	5 17 10	26 1 8	1 7 4	0 15 0
Found due	£305 8 1	£552 6 6	£506 0 3	£389 10 4	£130 0 9

(To be continued).

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THE JURIST.

LONDON, OCTOBER 20, 1868.

ANOTHER has been added to the list of decisions on the rule as to arbitrations in benefit building societies (*Wright v. Deely*, 4 H. & C. 27); the question there being, was the action maintainable, or was it compulsory to resort to arbitration alone to decide the matter in dispute. The action there was against the trustees of a benefit building society, inrolled under the 6 & 7 Will. 4, c. 32, and by one of the rules of the society it was provided, "That any member who should be desirous of withdrawing from the society any share or shares, should be allowed to do so, on giving two months' notice in writing of such his or her intention, to the secretary, subject to the payment of all fines then due, and to a certain deduction as a proportionate share of the expenses incurred: provided always, that the deduction should not extend to widows and children of deceased members, who should always have a priority in cases of withdrawal." Another rule provided, "That the board of management for the time being should determine all disputes which might arise respecting the construction of the rules, or of any of the clauses, matters, or things therein contained, and also of any additions, alterations, or amendments which should or might thereafter arise between the board and any member of the society; and in the event of their decisions being unsatisfactory, then to be referred to arbitration." The plaintiff, a member of the society, gave notice of his intention to withdraw, and claimed the amount of his shares. The board refused to pay it, on the ground that previously to the plaintiff's notice other members had given notice of withdrawal, and were, therefore, entitled to priority of payment, and that the society had no funds to pay the plaintiff's claim. The plaintiff thereupon brought the action, and it was held that the plaintiff's claim was a dispute between the board and a member of the said society respecting the construction of a rule, and, therefore, the action was not maintainable, but the dispute must be determined by the board of arbitrators. Martin, B., in his judgment, pointed out that the society was formed under the provisions of the 6 & 7 Will. 4, c. 32, which, by the 4th section, incorporates the Friendly Societies Act, 10 Geo. 4, c. 56, s. 27, and after observing that the rules of the society formed part of the case, and that there was nothing in them at variance with the provisions of these acts or the general laws of the realm; and, in addition, that they had been certified by the barrister appointed to certify the rules of these societies; and that, therefore, they were binding on every member of the society; and after shewing also, at some length, that the case came within the rule as to arbitration, proceeded as follows:—"It is argued that the 14th rule is not in compliance with the requisitions of the 27th section of the 10 Geo. 4, c. 56, but there is no foundation for that argument. The plaintiff has himself agreed that certain matters in dispute

between him and the board of management shall not be the subject of an action in a court of law; and after the decision in the House of Lords in *Scott v. Avery* (5 H. L. C. 891), it is clear that this action is not maintainable." Now, in *Scott v. Avery* the case stood wholly on the general law; and the question considered was, whether an agreement to refer disputes that might arise between the parties to a contract, in respect of any breach of it, was not invalid, as attempting to oust the Courts of their jurisdiction. But these rules of friendly societies and benefit building societies are expressly sanctioned by the Legislature, inasmuch as the 27th section of the incorporated act (10 Geo. 4, c. 56) directs that such rules shall be made. *Scott v. Avery*, we suppose, however, is used there by way of illustration of the principle on which such rules operate as a bar, by analogy to the case where the parties have bound themselves by agreement in a contract, that for any breach of that contract there shall be no cause of action until there has been a reference. The rules are thus put as an agreement between the members. The use of the principal case to practitioners is, that it adds another to the list of decisions as to what cases are within the rules or not, these rules being very similar in most societies of the kind.

It is to be observed, that in *Wright v. Deely* there had not been any advance to the member in respect of his own mortgage security; and, therefore, the now well-understood and settled law, that the rule to refer does not apply to disputes between mortgagor and mortgagee, is not disturbed. It took a long time, and much consideration, to settle the law on that point; and it may be useful to notice some of the later cases bearing on it. *Cutbill v. Kingdom* (1 Exch. 494) was the case of a loan of money on mortgage by the society to one of its own members; and one rule provided, that a committee should determine all disputes which should arise respecting the construction of the rules of the society, or any of the clauses, matters, or things therein contained, and also of any additions, alterations, or amendments which should or might thereafter arise between the trustees, officers, and other members of the said society; and it was held, that the trustees might notwithstanding bring an action against a member for the amount of his subscriptions and fines on his covenant on the mortgage deed. *Morrison v. Glover* (4 Exch. 430) was also an action on the covenant in a mortgage deed; but the mortgage was of a lease, and the defendant had covenanted, not only to observe and fulfil the rules of the said society, but also to pay the rent reserved by the lease; and the trustees sued for breaches of both these covenants. Now, the rule as to arbitration in that society provided, that reference should be made to arbitration of any dispute that might arise between the society and any member thereof; and the Court held, that the non-payment of rent was not a matter in dispute between the society and the defendant as a member of the society, and therefore gave judgment for the plaintiffs on the demurrer to the plea, not deciding the question whether, if the plaintiffs had only declared for the matter in dispute as to non-payment

of subscriptions and fines, they would have been bound to refer. In *Reeves v. White* (17 Q. B. 995) the action was on the covenant of a mortgage deed, for non-payment of fines, subscriptions, &c., and there the rule of the society, also a benefit building society, was very similar in its terms to that in *Cutbill v. Kingdom*. The plea set up the rule as a bar to the action, and the Court decided that the plea was answered by the replication, which traversed the allegation in such plea, that arbitrators were appointed according to the rules of the society and the act of Parliament. But the Court at the same time expressed an opinion that the plea was good; in other words, that if arbitrators had been properly appointed it would have been a defence to the action; and Lord Campbell, in delivering the judgment, supported that view by a reference to a comment upon the cases. However, in *Reg. v. Trafford* (4 El. & Bl. 122), the same Court came to a different conclusion. In that case the rules of a benefit building society contained a rule for referring all disputes between the society and its members to arbitration. The rules also specified the terms on which each member should obtain from the society the amount of his shares on mortgage of building premises, and the terms on which such members, if withdrawing from the society, might redeem their mortgages. A dispute arose between a member withdrawing from the society and the society, as to the terms on which, according to the construction of those rules, he was entitled to redeem his mortgage. The society refused to refer the dispute to arbitration. Two justices, on summons, made an order under stat. 4 & 5 Will. 4, c. 40, s. 7, on this dispute, and the Court of Queen's Bench made the rule for a certiorari to remove this order, as being without jurisdiction, absolute, on the ground that the justices had jurisdiction only over disputes arising solely from the relation of member and society, and that this dispute arose, not between member and society as such, but between mortgagor and mortgagee. Erle, J., delivered the judgment of the Court, from which, in conclusion, we cite a passage which gives the result of the cases as they then stood.

"It was contended," said Erle, J., that "the questions upon rights to land arising out of a mortgage are within the jurisdiction of the Courts of Westminster, although the mortgage should be made according to the rules of a benefit building society, and although the point in question really should be the construction of one of those rules; and that if these questions were within the superior jurisdiction, the justices had no authority to make the order in question.

"We are of this opinion. In *Cutbill v. Kingdom*, in the Exchequer, that Court took this view of a claim on behalf of a benefit building society in respect of a breach of covenant. In *Fleming v. Jelf* (3 De G., Mac., & G. 97) the Lord Chancellor took the same view with respect to a question arising upon a mortgage to a benefit building society, and cites two cases in which Lord Cottenham and Lord Truro had acted on the same view of the law. We, therefore, think that, on principle as well as authority, this rule should be made absolute."

And in *Farmer and Others v. Giles* (5 H. & Norm. 757) the same view was adhered to; and Pollock, C. B., said "when a statute says that disputes shall be referred to arbitration, and the award shall be enforced in a manner in which it is not possible to do justice in certain cases, those cases which cannot be dealt with under the enactment must be considered as excluded from it."

LIS PENDENS.

ABOUT a year ago we discussed the question "When should a *lis pendens* be registered, and when should notice be taken of a suit the pendency of which is registered;" and we endeavoured to shew the groundlessness of the vague terror with which a registered *lis pendens* is regarded by many half-informed practitioners. (11 Jur., N. S., part 2, p. 383). We might have referred, for a further proof that the subject is very little understood, to the Report of the Select Committee of the House of Commons on the Judgments, &c. Law Amendment Bill, dated the 17th June, 1864. Among the members of that committee were the Attorney-General (Sir R. Palmer), Mr. Selwyn, Mr. McMahon, and Mr. Malins. The committee inform the House, that—

"A registered *lis pendens* charges an estate, though the claim made by the plaintiff is neither ascertained or [sic] acknowledged. The charge thus created continues to hold good till the suit or action is finally disposed of, and this, in the case of Chancery proceedings of an administrative character, may not take place for several years. In the meantime persons are debarred from purchasing, from a reluctance to involve themselves in litigation. In the proceedings for winding up joint-stock companies, the law of *lis pendens* is liable to be specially abused. It is not uncommon in such cases to register *lis pendens* against the parties alleged to be shareholders, with a view to prevent their transferring their land while the contest is going on. By this ingenious device the shareholders' land is rendered unmarketable, though it is not even incidentally the subject-matter of the litigation. [.] The committee are, of course, aware that it is no argument for a change of a system, that the system is liable to be perverted; but the practicability of such a perversion serves to shew the largeness of the area which is covered by the registered *lis*. It seems to the committee that, in the event of a general measure being brought in, the case of *lites pendentes* ought to be particularly dealt with, and that no notice of a *lis pendens* should be binding unless the particular land affected by it be specified on the face of the register."

This passage in the Report appears to have been suggested by the evidence of Mr. E. W. Field, in which he says,—

"Much abuse now prevails in registering *lis pendens*. You are, perhaps, my debtor, or I assert you are, and file a bill against you, and I desire it to be recorded that I am making a claim against you which some day may ripen into a judgment, and I want to harass you by preventing you from dealing with your landed estate till my claim on you is settled, and register a *lis pendens* against you. In the proceedings for winding up joint-stock companies there has been great abuse, to my knowledge (and I will not say that I have not myself been guilty of it), in registering *lis pendens* against different shareholders, with a view to prevent their transferring their land during the time it is a matter of contest, whether they are shareholders of the

company or not. That is not at all what *lis pendens* means. What it means is, the pendency of a dispute with reference to the very particular land, and that is the only thing you ought to register. In Ireland you register easily enough; it is a register kingdom, and therefore you put the *lis* down on the register with a reference to the particular land itself. It seems to me that the whole system of *lis pendens* ought to be done away altogether, and that, at any rate, till there is a general register of all titles here, the only available notice should be a notice to the parties concerned; a direct notice that there is some one claiming an interest in the land which is not disclosed in the deeds."

In the *Law Journal* of last week "A Conveyancer" writes as follows:—

"Your numerous readers will shortly be aware, on returning from their vacation, that trouble has recently arisen from *lis pendens* being entered up against all shareholders in companies being wound up, stopping the completion of sales, &c. Various opinions have been given on this point in vacation, and the Land Registry Office, and, probably, the Court of Chancery, will soon have to consider it."

From all this, it appears to be commonly thought, and by many who should know better, that the registering of a *lis pendens* against a party to a suit charges that person's land with the payment of everything that may be recovered against him in the suit, in the same manner as if a judgment for the amount had already been entered up and registered. We have shewn in the article referred to, that a registered *lis pendens* has no such operation; that the act providing for the registration of pending suits has in no respect extended or improved the remedy of a litigant, but has merely abolished, in respect of unregistered suits, the doctrine, that a person who deals with a party to a suit, while it is pending, for any interest or property which is the subject of the litigation, has implied notice of the claim made in the suit (though not necessarily of all incidental equities, *Shalcross v. Dixon*, 5 Jarm. Conv. 493, 3rd ed.) When, therefore, a *lis pendens* is registered against a vendor or proposed mortgagor, all that is necessary for the protection of the purchaser or mortgagee is, to ascertain that the object of the suit is not to establish any title to or interest in the property to be sold or mortgaged, which would then disable the vendor or mortgagee from making a good title. A suit which may result in an order for the payment of money does not, though registered, operate as a charge or lien upon the defendant's real estate. The charge is first created by the order for payment, and is even then subject to all the provisions made by the Legislature for the protection of purchasers, &c. against judgments and orders for the payment of money—provisions which we dare not attempt to epitomise here. In the meantime, and until the registration of the order, and the writ of execution upon it, the defendant may freely dispose of and charge his real estate.

The actual operation of the law as to purchase of property which is the subject of pending litigation, is illustrated by the following passage from the evidence of Mr. S. J. Roberts, of Manchester, printed in the Appendix to the Report above referred to:—

"With respect to *lis pendens*, it appears to me to be a still more objectionable mode of charging an estate, inasmuch as it is not an ascertained and admitted claim on the part of the person charged, but one which may never, in fact, prove to be a valid legal charge against the estate; and I think the objection is still stronger. In that very case to which I have alluded, we knew that a *lis pendens* had been registered against the vendor for a sum of about 20,000*l*. We felt sure that the ground of the claim was such that it was not likely to

be sustained ultimately by the Court. At all events we saw that if we were to complete the purchases then, we must make some arrangement, and accordingly we took the undertaking of the solicitor for the vendor (and I believe every one of us had one), that we should be indemnified from any liability with respect to that *lis pendens*. The suit in which that *lis pendens* was registered has only been closed this very year. So that if we had waited, every purchaser, no doubt, would have been involved in a Chancery suit upon that very question up to this moment. The sum was 20,000*l*.; we took an undertaking from the solicitor and closed the transaction, that being the last; and, as shewing the nature even of undertakings, I may mention that the solicitor died about three years ago, insolvent, and therefore it may be imagined where we should have been; but at the same time, acting on the best discretion we could, we saw no alternative but, being ourselves driven into suits by the mortgagees, to pay the money, and we thought it the better way to adopt that course; and happily it terminated satisfactorily, the suit only being ended not more than three months ago. It proved to be a charge upon the property. There is no doubt it was a charge; it was shewn on the abstract, but it was said there was a compromise of that claim for a certain sum in the pound, and the suit was to endeavour to set aside that compromise, by saying that it had been, I do not say fraudulently, but improperly obtained, and that there were ample assets to pay it with; and the Court held that the party claiming that 20,000*l*. was bound by that original arrangement to take the dividend, and therefore the bill was dismissed, I think, with costs."

The transaction here referred to is evidently the sale of the Mostyn estates, and the litigation which Mr. Roberts supposed to have come to an end (*Brook v. Lord Mostyn*, 10 Jur., N. S., part 1, p. 554) was continued by appeal to the Lords Justices (S. C., 10 Jur., N. S., part 1, p. 1114), and finally to the House of Lords, who have recently confirmed the decision of the Master of the Rolls. That case, however, does not shew that the doctrine of *lis pendens* causes inconvenience or hardship. The charge, and the compromise of the claim appeared on the abstract; the litigation to set it aside was notorious; the plaintiff had served express notice of it upon many of the purchasers; and it was, if we are not mistaken, even referred to in the conditions of sale of some, at least, of the estates. It did not prevent the completion of any purchase, because an adequate indemnity was provided. If an indemnity had not been provided, purchasers would have completed or not according to their estimate of the value of the claim; and if the plaintiff's claim was honest, it would have been most unjust to prevent him from registering and protecting it.

The principal inconvenience arising from the registration of suits is, that where a *lis pendens* is found to be registered against a vendor, or (which is often worse) to have been registered against a previous owner, the register gives no information as to the object of the suit, or the property, if any, to which it relates; and if the vendor cannot produce a copy of the bill, search must be made in the records of the court. The act should be amended, by requiring a memorial of the property sought to be affected, and a copy of the bill, to be deposited in the Common Pleas Office at the time of registering the suit. But if the registration, according to the present system, of a winding-up suit against an alleged contributory, is found to be an impediment to the sale or mortgage of his real estate, the difficulty can only arise from the incompetence of the purchaser's or mortgagee's advisers.

SOCIAL SCIENCE CONGRESS.

SECTION B.—MUNICIPAL LAW.

THE subject for discussion at a meeting of the section was, "What would be the best mode of reducing the law of England to a compendious form?" Lord Brougham, Mr. E. James, M.P., Sir H. Verney, M.P., and Mr. Hadfield, M.P., were present.

Mr. J. F. Macquosen, Q. C., read a paper on the subject. He said—thirty-eight years ago, the most useful and most productive of all orations was delivered in the House of Commons by their illustrious president—an oration remarkable for the multitude of its suggestions, and for the singular fact, that almost all of them had been carried out, or were now in process of accomplishment. Instigated by the profound sensation which that speech created, Government issued two royal commissions to consider and report upon the laws of real property, upon the laws respecting crimes, and upon the public statutes of the realm. These commissions left untouched the bulk of what was technically called the unwritten civil law of England, that law (the most interesting of any) which governed our civil and political rights, and was evidenced partly by usage and partly by text books, but mainly by reported decisions of our superior tribunals, dispersed, as they were told, over 1200 volumes. The question was, could these be extracted from these repositories, and could they be presented to the country in the form of a pocket volume similar to the Code Napoleon? He was humbly of opinion that they could not. He readily admitted the advantages of codes, where they were practicable. Many persons in this country derided them, and said they had proved failures. But those who lived under them, and best knew them, gave a different account; and they had the strongest evidence in their favour, delivered by eminent jurists, writing not from theory, but from long practical observation. Accordingly, it was a fact, that of the several nations that had codified, not one had turned back or repented. Strange as it might seem to an English lawyer, they all preferred order to confusion, and agreed that laws were better in a single volume than in a thousand. What higher attestation could be desired than that of M. Dupin, who said, "The civil code is the first and best of all; it is clear and methodical, neither too long nor too short; the language of the Legislature is noble and pure; the rules are well laid down. The code of civil procedure has simplified the forms and diminished the expense of lawsuits. The commercial code is also generally esteemed. The code of criminal procedure and the penal code are the last, and are those to which the greatest objections have been raised. Despotism dictated them. In many instances State policy has made them her instruments, and liberty has suffered accordingly. Their revision has, therefore, been demanded. But all these codes, such as they are, have been productive of the greatest benefit. They have delivered us from the chaos of our ancient law." Notwithstanding the example of foreign States, and of despotic Governments, the predominating sentiment of this country was against codes. The reason was obvious. Codes implied organic changes. What was required was a digest to portray the law as it stood, setting forth its merits and its defects, so that it could be dealt with as might be deemed expedient. That we might have a digest, though not a code, seemed within the range of probability. Four years ago Lord Chancellor Westbury charged the speaker with the consideration of this subject, and the inquiries incident to it. Hence his apology for this address. The judicial

storehouse of no country would compare with that of England, and it was usual to say in this country, that every wrong had its remedy. But, as Lord Mansfield said, no legislative enactment would take in all the cases, and therefore the Courts went often on rules which, as his Lordship said, were drawn pure from the fountains of justice. This well-known practice of our tribunals must not be interfered with. The digest would not override, but be subservient to, our judicial system. Its delineations and definitions would be verified by references, so that the text and the authorities might be compared and construed together. The work contemplated would be a help, a light, and a relief, but not an imperative director; for although likely to prove of an incalculable assistance to the judge, he must not repose on it or forget his first duty, which was, to decide according to the law of the land, wherever that law might be found. According to this scheme, the all-sufficiency of the common law of the land would remain undisturbed. Its faculty of adaptation would be the same as ever, while the difficulties, the delays, and the perils of direct codification would be avoided. But they were not to suppose that the digest was to continue without authority for ever: on the contrary, in the fulness of time, after it had been repeatedly revised and corrected, after the judges and the profession had again and again tested it in practice, after criticism and experience had established its sufficiency, and, finally, after it had become familiar to the people as the safe and ready exponent of their rights and their duties, it would doubtless receive, as it would assuredly deserve, a definitive sanction from Parliament. Long, however, before the era of codification arrived, the digest itself, without any aid from the Legislature, would have secured the deference of the courts, and generated the satisfaction and the gratitude of a rational community. He urged that the proposed digest should not be confined to England, but should embrace Scotland and Ireland.

Mr. A. Waddilove, D. C. L., read a paper on the same subject. The question before them was how the complicated mass of our law could be reduced into a simple and acceptable compass. In the reign of Edward VI a proposal for the amendment of the law was sent up by the House of Commons to the House of Lords, "that the common and statute law should be in imitation of the Roman law, digested into a body under titles and heads, and put into good Latin," but the matter was not proceeded with. The speaker referred to the various attempts since made in this direction, and he remarked, with reference to some measures passed in this direction, that it was impossible that human foresight could provide for every contingency, particularly in framing a new jurisdiction or extending an old one, but to obviate the evil of having many acts on one subject, a system of revision ought to be adopted, whereby at the end of every five or seven years all those acts should be repealed and a fresh one passed, containing all the amendments to the original act, and omitting what had been repealed.

Dr. R. M. Pankhurst read a paper on the same subject. He said—the fact of the alleged failure, or only partial success of former attempts at codification, does not of necessity lead to despair of a happy result in other cases. But the argument, from the partial failure of former efforts, is open to the two following observations:—1. The systematised body of law which in any country has been introduced by way of substitution for a previously existing system has confessedly in every case proved superior to that which gave place to it. 2. As soon as a code comes into existence it is compared, not with that which it supplanted, but with an ideal standard. In proof of this, it should be distinctly noted, that the definition of a

code has steadily progressed, and becomes more and more scientific and precise as codes have been attempted, and as judicial science has advanced. The conception of a code in modern times puts its demands upon higher ground than that taken by the jurisprudence of former times. That conception demands that a code should satisfy the four following conditions:—It demands—1. That the code should constitute a complete body of legal rules. 2. That it should be scientifically arranged. 3. That the rules should be expressed in precise and abstract terms. 4. That the rules should be established by direct legislative action.

I.—*A Code considered with Reference to its Expression in precise and general Terms.*—The soul of the codification question is a question of expression. Two points, indeed, arrangement and expression, involve substantially the whole subject of discussion. The arguments proper to the present position are best presented by considering the different forms of case law and statute law. By the terms "statute law" and "case law," respectively, it is intended to designate these laws by the characteristic difference of the mode of their establishment, the former being instituted by direct, the latter by indirect, legislation. In dealing practically with the rules of a legal system we have three things:—1. The rules of law. 2. The cause to be adjudicated upon. 3. The relation of the rule to the case. There are here in practice as to the rule two difficulties:—1. The discovery of the rule itself. 2. The application of it to the case in hand. Now, it is the first of these difficulties which is at this point under discussion. In regard to case law the rule of law exists, involved and implicated with the facts, circumstances, and peculiarities of the decision, or series of decisions, to which it has been either once or successively applied. The first duty, then, obviously is, by a process of induction, to collect from the case or cases their ratio decidendi, the principle of their decision. But this duty must be performed under the following serious embarrassments:—1. The cases are scattered over a wide field. 2. They are numerous and often conflicting. 3. The rule to be discovered is closely bound up with those cases, and often cannot be eliminated without an exhaustive induction applied both to the details and to the general principles established in the cases. 4. The rule itself has been originally established in many instances in haste, in view of a particular emergency, and never with the direct and avowed purpose of establishing it. 5. The rule must, in most cases, be collected under the same disadvantages of pressure and of the urgent claims of particular cases. Let this state of things be contrasted with the procedure of discovering the rule in the case of statute law. But first it should be stated that the statute law of England has never had a fair chance of putting forth its real superiority to case law, because the statutory element of the law has been in general supplemental to case law, and has been almost always established with reference to existing conditions of the common law. A statute presents the rule of law to be discovered under the following aspects:—1. It expresses the rule in general and abstract terms. 2. It has established the rule deliberately, and with the direct and avowed purpose of being used as a rule. Therefore the form of the expression, unlike case law, constitutes an essential index for discovering the nature and scope of the rule. But language, it is said, is ambiguous. This objection is insisted upon by many who oppose the codification of our law, and in particular by Sir J. P. Wilde, in his address at the York congress of this association. What is the value of this objection in the present case? The objection may be dealt with thus:—1. The objection of the ambiguity of language is

common to all expression of thought. 2. The difficulty is great, but it is the chief difficulty of codification. 3. The difficulty is, however, in a code distinctly acknowledged and reduced to a minimum by—(a) the scientific character of the method employed in constituting the code; (b) the care directed to the avoidance of the difficulty in the expression itself; (c) the deliberative character of the occasion upon which the rule is expressed. Admitted, then, that the difficulty of codification resides in the ambiguity of language; but this reduces the matter to a question of interpretation. Now, it is possible to put the principle of interpretation upon a scientific footing, and certainly the work of interpretation cannot be regarded as in any sense so toilsome, or as in the result so uncertain, as the process of the inductive discovery of the principles of case law before considered. Moreover, the difficulty of discovering a rule of law in nearly every case arises from its indeterminateness or inconsistency, or both; but it is precisely the vices of indeterminateness and inconsistency that codification undertakes and puts forth its most powerful efforts to cure.

II. *A Code considered with Reference to its Scientific Constitution into an Organic Whole.*—The fact of the progress of the definition of a code is nowhere more conspicuous than in the demand for scientific unity in any body of legal rules, considered as an adequate expression of a system of jurisprudence adapted to govern the conduct and relations of any great modern community. It is precisely here, too, that there is most ground for confidence in the successful codification of the law of England. The progress of thought in every region assists here. The systematizing of theories of scientific inquiry, the improvements in the methods of philosophising, the increased insight into the laws of the operations of the faculties in the investigation of truth—all these things constitute important aids toward the practical realisation of the idea of a code. These considerations add further proof of the dependence for the success of a code upon conditions of time, place, and method. The dominant conceptions which should preside over and pervade a soundly-constituted system of legal rules must, in all essential respects, be drawn from the very facts and materials over which they are subsequently to exercise a sovereign sway. History must confirm what philosophy institutes. The labours of other nations and times help us in this work. The codes of Prussia, Russia, and France, and, above all, the last great work of the kind—the New York Code, just completed by Mr. D. D. Field and his colleagues—stand for us as so many experiments *lucifera*. The indispensable conditions of success are really present. There exist in sufficiency the necessary instruments of precise and adequate terminology and nomenclature. The materials and methods are possessed upon which a definition of the essence of the subject-matter of positive law may be framed, and an exhaustive analysis made of the necessary and related notions and principles involved in the clear and complete conception of the incidents of a soundly organised legal system. Hence arise the means of defining the conditions of a scientific arrangement with leading and subordinate division, based upon a definition of the principles upon which they respectively rest. After the law has been distributed, according to the procedure of a right method of classification, it is imperative that that method should be constantly and consistently pursued. By the action of this procedure two results would arise of immense consequence. This scientific classification of the legal system, first, would raise to its highest power the knowledge of that system in its whole extent; and, secondly, would provide the best opportunity for extending it upon right principles, and in the best form.

The possibility of organising upon such a basis the entire law of England is assured to us by the very notion of law itself, by the field which it occupies, by the nature and compass of the rights and duties about which it is conversant, considered with reference to their subjects, their objects and purposes, and the persons in whom they reside, and upon whom they impose obligations. In the practical realisation of this scheme two things are, of course, essential—design and execution; but the former is by much the most important, for there can be no success without a clear and adequate grasp of the principles and mechanism of the organisation to be operated upon. The various provinces of the kingdom of the law are to be reduced to harmony by being placed under the empire of the leading principles which govern their relations to each other.

III. *A Code considered with Reference to its Establishment by direct Legislative Action.*—The advantages of arrangement and expression fully considered in the comparison of statute and case law receive a practical realisation in the introduction of the element of direct institution. Here is plainly seen the difference between a rule of law coming into existence in an abstract form, not only designed to be, but distinctly appearing to be, a rule for future use, and one established indirectly, in view, not of a class of cases, but of a particular emergency, and presented in a concrete shape, involved in the matter and circumstances of the occasion to which it owes its origin. By direct legislation the procedure necessary in dealing practically with the law is reduced to a matter of ratiocination. The inductive process is performed by the Legislature. The general propositions are furnished directly by supreme authority, and their particular applications are eliminated from them by deductive reasoning. The inquiry is thus reduced to an investigation into the meaning of forms of expression, into the application in particular cases of a given form of words. This brings the entire work to a question of interpretation. It is asserted in the introduction to that able work, *A Compendium of Mercantile Law*, by the late Mr. John William Smith, that "the codification of our mercantile law would be a national evil." Codification, it is thought, would impose fetters upon its freedom and power of improvement. It may be answered, however, that the customs of merchants and the exigencies of commerce, which enter so largely into the composition of that law, would, if that law were codified, be as much causes and reasons of the law as they now are, but system, and method, and directness, which are now absent, would then be supplied.

IV. *A Code considered as a complete Body of Legal Rules.*—With regard to completeness, a code may be considered from two points of view; as to the existing state of the law, and as to the future. A code looked at as a methodised compendium of existing law is, it is affirmed, on the principles of the arguments before submitted, far superior in point of comprehensiveness to the present position of things. As to the objection urged by Sir J. P. Wilde and others that a code is not perfect in relation to future litigation, the answer is, that that is an objection applicable to all law. But that which is a defect common to all systems of law is, in the case of a code, less extensive and susceptible of readier redress. Upon this point it is possible in the interests of codification to assert, in view of this common defect as compared with other States in which legal systems exist, that in the case of a code, first, the amount and nature of the defect itself is more clearly defined; secondly, the best mode of supplying the defect is more distinctly suggested; thirdly, the means of giving effect to the suggested remedy are more readily provided and more safely applied. Here, there-

fore, is an inevitable imperfection of every system, which requires the creation of law, but a code reduces that imperfection to a minimum, and causes what remains of defect to be furnished with the least mischief, and in the easiest way. An ideal system of law would be a high triumph of scientific method, classification, and expression. In such an ideal and "elegant" legal system, the rules of which it is composed are in all their rank and variety precise and determinate, marking with clearness and perspicuity the essential properties of the several accurately defined classes, in view of which these rules have been framed, and to the government of which they are assigned, so that every case as it arises is easily and surely referred to its class, and is also readily and with certainty subjected to the incidence of the rule under the cognisance and dominion of which it properly falls. Possessing the virtue of internal consistency, because the power of a true unity pervades and animates the whole, this system demonstrates its worth and usefulness by the commanding attributes of largeness of view, simplicity of constitution, directness of application, and perspicuity of language. Towards this ideal standard a good code approaches by the process of a constant approximation. The law of England can and ought to be put upon this career of advance towards this high standard. The constitution of the law of England upon such a philosophic basis is a debt which the judicial intellect of the time owes to the profession and to the public; and it is of the highest consequence to many interests, vitally affecting the common weal, that this obligation should receive an early and adequate discharge.

Mr. *Hastings* argued, that the tendency of modern legislation was in favour of reducing our law from its present confusion to a compendious form, in the shape of a digest.

Mr. *Dudley Field* said the primal difficulty we had in England was the separation of law and equity. In the county court, to a great extent, law and equity were united in the same suit. Then that shewed the absurdity of the whole thing. What we wanted was the same mode of procedure—the same legal and equitable remedy to be given in the same suit. He then explained how the revised statutes of New York, Massachusetts, and Connecticut were passed.

Sir *Eardley Wilmot* hoped that the work of codification would not remain long unaccomplished. Before the Social Science Congress commenced its meetings, he in 1851 published a work as to what he considered should be the code of Victoria, in which, to a certain extent, he foreshadowed the work which had been carried out in America by Mr. Field. He said, the necessity of a code of laws was pointed out by Lord Bacon nearly 300 years ago.

Mr. *E. W. Cox* raised the question, whether the code could be made to work after it was constructed. They had to transmute the law into another shape. He remarked, that in France the decisions upon a subject amounted to twenty times the bulk of the law itself, so that, in practice, the French lawyer had as much to do as the English lawyer. It was the same in New York. Still, he recommended the consolidation of our law, which would result in its simplification. He did not desire the continual amendment of law which now obtained. The Sanitary Act, which amended many distinct statutes, was a disgrace to us; for, instead of repealing previous statutes, it provided that nothing inconsistent with the present statutes was unrepealed, and the effect was, that they had to be continually referring to the previous acts.

Mr. *Joshua Williams*, Q. C., said those who desired a compendious form of the law felt first the great necessity of it, and next the great difficulty of the

task. If they wished for the reduction of the law to a compendious form, sufficient time must be given, and the sooner it was done the better. Codification and amendment must go hand in hand. He had tried, as many of them knew, to reduce to a compendious form the law of real property. A digest would be useful and valuable only with a view to amendment.

Mr. Daniel, Q. C., said there was a feeling, both on the bench and among the bar, in favour of a law that all could read and understand. It was said that codes were generally made by despotic Governments, but no such observation could be made upon a code coming from a country which lived in the light of the purest liberty. They would be most neglectful if they did not avail themselves of the practical experience of Mr. Field, which shewed how the work of codification could be achieved.

Mr. Hastings replied to the various speakers; and Mr. Field made a few remarks. He said, that in New York they had got over all their difficulties, and there was now no dispute as to its construction.

The President (the Hon. G. Denman, Q. C., M. P.), recommended that a digest should be prepared as a preparatory step towards a code, as he had suggested in his address that morning.

This closed the proceedings of the section for the day.

JUDICIAL STATISTICS FOR 1865.—ENGLAND AND WALES.

(Concluded from p. 396).

The total amount of costs and charges in each of the years 1865 and 1864 (with the average of the five years 1859-63) was as follows:—

	1865.		1864.		Average, 1859-63.	
	£	s. d.	£	s. d.	£	s. d.
Submitted .	24,637	3 5	28,380	12 5	24,251	15 6
Found due .	16,764	10 9	20,450	13 9	17,571	17 2

The total number of instruments prepared in the registry in 1865 was 1226. In 1864 the number was 1206. The numbers of each description of instrument under each of the headings of salvage, damage by collision, &c., are given in the tables. The instruments executed are stated under the return of the proceedings in the office of the marshal.

The following are the numbers prepared in the registry in 1865, in comparison with the numbers for 1864, and the average of the numbers for the five years 1859-63:—

	1865.	1864.	Average, 1859-63.
Bail bonds prepared in the registry	151	225	261
Affidavits of justification . . .	140	104	131
Other instruments prepared . . .	935	877	982

Balances in hand at the beginning of the year . . .	.	.	.
Received during the year . . . . .	.	.	.
Paid during the year . . . . .	.	.	.
Remaining in hand at the end of the year . . .	.	.	.

The total sum realised by the Commissioners of Inland Revenue on account of Admiralty Court stamps during the year 1865 was 9603*l.* 2*s.* 1*d.* The amount in 1864 was 8597*l.* 5*s.* 7*d.* The average of the five years 1859-1863 is 8771*l.* 3*s.* 9*d.*

Under the head of general business, the number of days of sitting is stated, the number varying from year to year. In 1865 the court sat on 99 days; the registrar and merchants on 33. In 1864 the court sat on 102 days; the registrar and merchants on 28. In 1863 the sittings were, of the court, on 118 days; of the registrar and merchants, on 27. In 1862 the sittings were, respectively, on 89 and on 23 days; in 1861, on 87 and on 25 days; in 1860, on 60 and on 27 days.

In 1865 one commission was inrolled in the registry appointing Lords of the Admiralty, and five commissions were appointed to administer oaths. In the preceding year there was one commission appointing Lords of the Admiralty, and two commissions for administering oaths.

In 1865 there were fifteen claims investigated by the registrar in respect of seamen volunteering into the Royal Navy under the 17 & 18 Vict. c. 104; of which nine were allowed in full, and six were varied or altered. In 1864, eleven of these claims were investigated; of which nine were allowed in full, one was varied or altered, and one was disallowed in toto. The amount claimed for compensation was 196*l.* 3*s.* 11*d.* in 1865, against 170*l.* 3*s.* 4*d.* in 1864; of which 26*l.* 6*s.* 10*d.* was disallowed in 1865, and 7*l.* 10*s.* 4*d.* in 1864.

There were seventeen powers of attorney registered in each of the years 1865 and 1864 under the Navy Prize Agents Act, 1863.

The number of cases in which payments were made to the Naval Prize Account in 1865 was twenty-seven, in which fourteen of her Majesty's ships were interested. The total amount paid in was 18,854*l.* 16*s.* 10*d.* In the preceding year there were eighty-seven cases, in which fourteen of her Majesty's ships were interested also, the amount paid in being 48,890*l.* 13*s.* 6*d.*

There were four salvage cases, in which four of her Majesty's ships were interested, the amount paid in being 4750*l.* In 1864 there were three of these cases, the amount paid in having been 421*l.* 3*s.* 6*d.*

The number of cases in which distribution was ordered in 1865 was forty-seven, of proceeds of slave vessels and cargoes, and tonnage bounties; the total amount under this head being 26,817*l.* 11*s.* 9*d.*; in salvage cases, four, the amount being 4008*l.* 5*s.* 11*d.*; and of bounties for capture and destruction of pirates, and proceeds of piratical vessels, five, the amount under this head being 2590*l.* 3*s.* 6*d.*

The balances of suitors' and other moneys in hand at the beginning and end of the year, and the amounts received and paid during the year, are shewn in the table under different heads. In the balances the amounts remaining in the hands of the Paymaster-General and in the hands of the registrar are distinguished. In the amount received during the year, the sum received on account of the amount voted by Parliament for salaries and other expenses are shewn; and under paid during the year, the amount for salaries and other expenses of office is stated separately.

The following were the total amounts for each of the years 1865 and 1864, with the average of the totals for the five years 1859 to 1863 inclusive:—

	1865.		1864.		Average, 1859-63.	
	£	12,827 11 1	£	22,624 14 8	£	27,750 14 1
		99,764 6 2		38,928 8 1		57,070 2 11
		69,308 18 8		48,723 11 8		58,534 0 0
		30,465 7 6		12,827 11 1		26,284 17 8

The return of the proceedings in the office of the marshal of the High Court of Admiralty of England shews, under the different heads of salvage, damage, bottomry, necessities, towage, wages, pilotage, restraint, possession, and other causes, the number and

description of instruments executed, viz. warrants; citations in rem; citations in personam; monitions for different purposes; attachments; subpoenas; decrees of possession; releases; commissions of appraisement, of appraisement and sale, of unlivery appraisement and sale, of removal of ships, of removal of cargoes; the total number of instruments executed having been 674 in 1865, against 625 in 1864.

The return shews also the number of arrests made, viz. of ships; of ships and cargoes; of ships and freights; of ships, cargoes, and freights; of cargoes only; of ships, masts, stores, &c.; of ships, ammunition, equipments, &c., of proceeds in registry; the total number of arrests made being 296 in 1865, against 268 in 1864.

There were 170 notices of bail, and 168 reports as to sufficiency of bail. Of these matters there were respectively 175 and 172 in 1864. The total amount of bail reported was 225,448*l.* 5*s.* In 1864 the amount was 216,297*l.* 1*s.* 5*d.*

The amount of proceeds paid into the registry was—of ships sold, 44,795*l.*; of cargoes sold, 42,941*l.* 3*s.* 11*d.* The corresponding amounts in 1864 were 13,380*l.* and 469*l.* 12*s.* 9*d.*

The following table shews the proceedings in her Majesty's Court for Divorce and Matrimonial Causes in the year ended the 31st December, 1865, as returned by the chief registrar, in comparison with proceedings in 1864, and with the average of the numbers under each head for the five years 1859–63 inclusive:—

	1865.	1864.	Average, 1859–63.
Petitions filed:—			
In forma pauperis	5	1	4
For nullity of marriage	5	16	5
For dissolution of marriage	222	231	213
For judicial separation	62	66	56
For restitution of conjugal rights	11	17	11
For jactitation of marriage	—	—	—
For declaratory act	3	2	2
	306	332	291
Applications for protection of property	18	8	17
Petitions for alimony:—			
Pendente lite	74	64	70
Permanent	12	1	3
Citations issued	430	468	415
Appearances entered	230	248	208
Answers filed	245	280	206
Replies by petitioner	127	134	103
Rejoinders by respondent	8	10	12
Motions	786	890	698
Summonses	796	755	621
Causes tried before the Judge Ordinary:—			
On oral evidence	308	143	116
On affidavit	—	—	—
Causes tried before the Judge Ordinary and jury	53	48	30
	256	191	145
Judgments given:—			
By the full court	4	5	76
By the Judge Ordinary	256	143	143
Application for new trial	4	2	3
Appeals to the House of Lords	—	—	—
Appeals from Judge Ordinary to the full court	4	—	—

This court being established under the statute 20 & 21 Vict. c. 85, the proceedings extend to eight years, during which period the total number of petitions filed amounts to 2445, giving an average of 306 for each year. The total number of judgments given is 1467. The amount of fees received in 1865 was 2683*l.*, against

2988*l.* in 1864. The average of the amounts for the six preceding years is 2326*l.*

The Court of Probate, established under a statute of the same year (20 & 21 Vict. c. 77) as the Court for Divorce and Matrimonial Causes, exercises an exclusive jurisdiction in all matters relating to the grant or revocation of probate of wills and letters of administration.

Of the proceedings in this court in the year 1865, the senior registrar has furnished a return similar to the returns for previous years; and in the following table the proceedings are shewn, under the heads given in the return, for each of the years 1865 and 1864, with the average of the numbers under each head for the six years 1858–63:—

	1865.	1864.	Average, 1858–63.
Total number of probates granted	9396	9445	8921
" administrations	4678	4807	4363
" caveats	959	1006	923
" appearances	247	285	233
" motions	454	511	559
" petitions	3	—	4
" causes	470	483	401
Summonses	486	605	449
Trials by special jury	12	9	12
Trials by common jury	6	7	11
Causes heard by judge only	39	33	24
Probates and administrations granted:			
On hearing of causes	56	49	41
On motion	193	245	271
On summons	8	3	17
Causes in progress at the end of the year	139	103	110
Causes ready for hearing and left unheard	7	10	7
Questions referred to courts of law	13	6	8
Notices of appeal to the House of Lords	—	—	—
Revocations of probate or administration	50	36	37
Total amount of fees in court and contentious business	£1537	£1891	£1968
Taxed costs	6612	7602	9230

The majority of the causes, it is stated by the senior registrar, were disposed of by motions in court—8 by orders on summons, and 79 by final orders on summons. The total amount of stamps issued in London for probate and administration was 906,526*l.* for 1865; for the preceding year the amount was 808,169*l.*

In the return furnished by the chief registrar, a statement is given of the amount in value of the property under which probates and administrations passed in the principal registry of the Court of Probate were sworn in the year 1865. The value of the effects sworn under was 57,588,696*l.*

A statement is also given of the income and expenditure in respect of the fees levied in the principal registry during the year, the sum received amounting to 55,262*l.* 16*s.* 9*d.*

The power of the district registrars extends to the grant of probates and letters of administration in common form, that is, where there is no contention to the grant. In disputed cases, where the value of the property is under 200*l.*, the grant can be made only on the decision of the county court. The total of the proceedings in the whole of the forty district registries, and the total amount of fees and stamps, were as follows for each of the years 1865 and 1864. The average of the six years 1858–63 is added:—

	1865.	1864.	Average, 1858-63.
Number granted in common form :			
Probates	15,109	14,882	13,576
Letters of administration	5,717	5,276	5,029
Letters of administration with will annexed	789	930	748
Number granted under direction of judge :			
Probate	15	17	13
Letters of administration	5	6	5
Letters of administration with will annexed	3	2	2
Number of caveats against grants of probate and letters of admini- stration	267	309	291
Number refused under direction of judge	—	1	2
Number granted on decrees of county courts :			
Probates	—	2	2
Letters of administration	—	—	—
Number recalled or varied on de- crees of county courts	—	—	—
Total amount of fees received	£63,808	£63,290	£58,574
Amount of duty stamps for pro- bate and administration	£581,421	£567,939	£473,984

Similar information to that furnished by the chief registrar as to the amount in value of the property under which probates and administrations were sworn in the district registries, it is hoped, will be obtained for another year from the district registrars, it being found that satisfactory information cannot be given upon this point by the Legacy Duty office, to which department application was made with regard to the past year.

The total number of suits in the Ecclesiastical Courts in 1865 (exclusive of faculties) was 23, of which 13 were in the Arches Court of Canterbury, three in the Arches Court of York, three in the Diocesan Court of Bath and Wells, two at Rochester, and two at Worcester.

The nature of the proceedings was as follows:—

In matters of church rates	13
Pew rights	2
Making alterations in a church or churchyard without a faculty	1
Against granting a faculty	1
Against collation to a canonry	1
Against institution to benefice	1
Decreeing a monition	1
Deprivation of benefice	2
To answer articles, &c.	1

Of these suits seven were abandoned; one was dismissed; in one there was an interlocutory decree; three were agreed; in one there was sentence for payment; and ten were still pending.

In 1864 the number of suits was 15; in 1863, 22; in 1862, 31; in 1861, 36; in 1860, 35; and in 1859, 28.

In addition to the foregoing, in 1865, there were 109 suits for faculties, viz.—

For altering, &c. churches	93
For pew seat	1
For erecting a school in a churchyard	4
For tablets	4
For removal of bodies	2
For other objects	5

In 104 cases faculties were granted, in one refused, and four were in progress.

In 1864 there were proceedings in 95 cases or suits for faculties; in 1863, in 82; in 1862, in 77; in 1861, in 95; in 1860, in 81; in 1859, in 87.

The amount of court fees was, in 1865, 374*l.*; in 1864, 320*l.*; in 1863 and in 1862, 300*l.*; in 1861, 294*l.*; in 1860, 288*l.*; in 1859, 281*l.*

The proceedings of the Judicial Committee of the

Privy Council in the year 1865 are shewn in a return made in the usual form by the registrar of the Privy Council, under the heads of Admiralty Courts, Ecclesiastical Courts, Channel Islands and Isle of Man, Colonies, and India.

The following abstract shews the number of appeals entered, the number dismissed for non-prosecution, and the number heard and determined, with the number of judgments affirmed, the number varied, and the number reversed, for each of the years 1865 and 1864, with the average of the numbers under each head for the five preceding years, and the number of appeals (lodged since the 1st January, 1860) which remained for hearing on the 1st January, 1866, and the 1st January, 1865, respectively, with the average of the numbers on the 1st January of each of the five preceding years:—

	1865.	1864.	Average, 1859-63.
Number of appeals entered	89	75	63
Dismissed for non-prosecution	9	8	10
Heard and determined	32	40	41
Judgments affirmed	16	31	23
„ varied	1	1	3
„ reversed	15	13	16
Appeals (lodged since 1st January, 1860) which remained for hearing 187	114	94	

In nine of the appeals heard and determined in 1865 no costs were given; in twenty-three costs were given. In the preceding year in ten of the forty appeals heard and determined no costs were given; in thirty costs were given.

The total amount of costs taxed (in twenty-one appeals in which the costs on one side only were taxed by the registrar) was 925*l.* 7*s.* 4*d.*, which gives an average of 442*l.* 3*s.* 2*d.* for each case. In the preceding year the total amount taxed was 648*l.* 7*s.* 9*d.*, and the average 231*l.* 11*s.* 8*d.*

Five applications were lodged during the year for the extension or confirming of letters-patent; one was withdrawn, one dismissed, and one granted.

The amount of council office fees on appeals was 827*l.* 5*s.* 6*d.*, against 732*l.* 18*s.* 6*d.* in 1864; in 1863 the amount was 824*l.* 14*s.* 6*d.*; in 1862, 1381*l.* 11*s.*

The amount of fees on patent cases was 66*l.* 4*s.* 6*d.* in 1865; in the preceding year it was 38*l.* 5*s.*

The Judicial Committee likewise heard, during the year 1865, twenty-eight petitions in appeals (interlocutory) argued by counsel, against nineteen in the preceding year.

The judicial proceedings of the House of Lords during the session of 1865 are shewn in the usual form in the return furnished by the clerk of the Parliament.

In the following abstract the number of cases from each of the courts named is stated, in comparison with the number for the preceding year, and with the average of the five years 1859 to 1863 inclusive:—

	1865.	1864.	Average, 1859-63.
From the Court of Chancery—			
England	90	11	19
Ireland	1	4	7
From the Court of Exchequer—			
England	1	3	—
Ireland	1	—	—
From the Court of Exchequer Chamber—			
England	12	11	8
Ireland	—	—	2
From the Court of Session, Scotland	25	33	27
From the Court of Probate—			
England	—	1	2
Ireland	—	—	—
From the Court of Divorce, England	2	1	2
	92	64	67

Of the sixty-two appeals and causes in error presented in 1865 twenty-three were in matters of real property, against fifteen in the preceding year; twenty-one in matters of personal property, against thirty-two in the preceding year; six in matters of real and personal property, against five in the preceding year; thirteen were dismissed for want of prosecution, against fifteen in 1864.

Thirty-seven judgments were delivered in 1865, including causes heard in the previous session, and standing over for judgment, against twenty-seven in the previous year. Twenty-four of the causes in 1865 were simply affirmed; one was affirmed with variation; four were reversed; three in part reversed and in part affirmed; one in part reversed with direction; and four reversed with direction, declaration, or remit.

The total number of causes heard in session 1865, including cases standing over for judgment, was thirty-three against thirty-six in 1864. The total number of effective causes remaining for hearing at the end of the session of 1865 was forty-eight, against forty-two in the preceding year. In 1863 the number of causes which remained for hearing was thirty-one; in 1862, thirty-five; in 1861, twenty-six; in 1860, twenty-seven; in 1859 and 1858, each forty-nine.

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F. S. LESLIE.

Secretary of State's Office,
Whitehall, May 31, 1866.

BOOK RECEIVED.

The Law of Fire Insurance. By Charles John Bunyon, M.A., of the Inner Temple, Esq., Barrister-at-Law, Author of "The Law of Life Assurance," &c. 8vo., pp. 303.—C. & E. Leyton.

Sir James L. Knight Bruce has resigned the office of Lord Justice of Appeal, and will be succeeded by Sir Hugh Cairns. Mr. Rolt, Q. C., will, it is said, be Solicitor-General, in the place of Sir W. Bovill, who becomes Attorney-General. Sir Hugh Cairns is a member of Lincoln's Inn, and was called to the bar in Hilary Term, 1844. He became Solicitor-General under Lord Derby's Government in February, 1858.

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The Jurist

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THE JURIST.

LONDON, OCTOBER 27, 1866.

THAT the right a man has not to have his land disturbed or caused to subside by the acts of his neighbour who owns the adjoining land, what is usually termed the natural right of support to the soil unincumbered by buildings upon it, is a right of property, and not an easement, is now well settled law. To gain an easement for superincumbent buildings, there must be grant or prescription, but for the owner to maintain his land in its ordinary condition, free from injury by his neighbour, is the necessary incident of complete property in it, without which no such property could exist. This is well put in Gale on Easements:—"As far as the mere support to the soil is concerned, such support must have been afforded as long as the land itself has been in existence; and in all those cases, at least, in which the owner of land has not, by buildings or otherwise, increased the lateral pressure upon the adjoining soil, he has the right to the support of it, as an ordinary right of property, not as an easement, as being necessarily and naturally attached to the soil. The negation of this principle would be incompatible with the very security for property; as it is obvious, that if the neighbouring owners might excavate their soil on every side up to the boundary line to an indefinite depth, land thus deprived of support on all sides could not stand by its own coherence alone." (3rd ed., p. 309). And the well-known case in the House of Lords, *Bonomi v. Backhouse* (9 H. L. C. 547), fully recognises that principle. Having shewn the nature of the right to natural support, we would further observe, that if this right is infringed upon, the party infringing it is responsible for the consequences. If he does that which would have caused the land to slip without the building upon it, is he liable to the displacement of the buildings upon it, so far as it results from that cause, and the injuries they have sustained in consequence?

We may here cite another passage from the 3rd edition of Gale on Easements, p. 311:—"Even if the pressure upon the adjoining soil has been increased by buildings, however modern, on the surface, still an action will lie if the soil sinks not on account of this additional pressure, but on account of the operations on the adjoining soil, and would have sunk if there had been no buildings upon it." Referring to *Stroyan v. Knowles* and *Harmer v. Knowles* (6 H. & Norm. 454) and *Hunt v. Peake* (1 Johns. 705; 29 L. J., Ch., 785), Sir W. P. Wood, V. C.

With this preface we would draw the attention of our readers to the recent case of *Thackeray v. Smith* (12 Jur., N. S., part 1, p. 545; 1 Law Rep., Com. Law, 564). The action there was for damages alleged to have been caused to the plaintiff's land and building by the defendant's operations on his own land; and the facts were, that the defendant, who was a contractor for a new line of railway, had, in order to carry on the works, sunk a large well in close proximity to the out-

side of the kitchen wall of the plaintiff's house, and when there was no further occasion for the use of the well, had "filled it up with such loose earth that the ground round it sank, and the plaintiff's building was injured, causing damage to the amount of 15*l*." At the trial the jury found, in answer to questions by the Chief Justice, "that the land of the plaintiff would have sunk if there had been no building on it, and that some of the particles of sand from it would have fallen into the defendant's property, but that the plaintiff would have suffered no appreciable damage." (See 1 Law Rep., Com. Law, 564). The verdict was entered for the defendant, with leave to the plaintiff to move; and the Court in banc held, that the plaintiff was not entitled even to nominal damages, because if the building had not been there, he would have suffered no appreciable damage. Erle, C. J., in the course of his judgment, said, that for a man to dig a hole on his own land is in itself a perfectly lawful act of ownership, and that it only became a wrong if it injured his neighbour; and since it was the injury itself which gave rise to the right of action, there could be no right of action unless the damage was of an appreciable amount; and Byles, J., observed, that in actions for a trespass, the trespass itself was a sufficient cause of action; but that in actions for indirect injuries like that, the judgment of the House of Lords in *Bonomi v. Backhouse* shewed that there was no cause of action if there were no damage, and that no distinction could be made between no appreciable damage to the land, and no damage at all. Smith, J., said that the mere subsidence of the surface of the soil was not necessarily an injury, and that the Court was bound by the verdict of the jury, who found that, in fact, no appreciable damage would have occurred if the new building had not been on the land.

The Court did not decide that the defendant had a right to cause the subsidence of the ground, and if he had not a right, his act was wrongful, and it would follow, that he ought to be liable for the consequences that resulted from it. No question as to "appreciable" damage arose in *Bonomi v. Backhouse*. The question there was on the Statute of Limitations. Admitting that some years ago the mines were worked in such a way as to cause a thrust, which in its gradual progress first weakened the support to the plaintiff's land, and finally caused it to subside with the houses upon it, when did the cause of action arise? The answer by the House of Lords was—when the land sank, and not before. There was no question before the House of Lords as to extent or appreciability of damage. But to revert to the principal case, the plaintiff's building on his own land was a perfectly lawful act; while, on the other hand, the defendant's digging a hole in his land to such a depth, and in such a place, that he would have caused the plaintiff's land to subside in its ordinary state, was an unlawful act. Then, as to the consequences. It is true, that the building would not have been injured if it had not been there; but if the land would have sunk without the building on it, and the building sank in consequence of that aggression by the defendant, and not in consequence of the removal of any lateral support be-

yond that which was incident to the ownership of the land, then, according to the previous authorities at least, the plaintiff was entitled to recover compensation for the injury to the building as well as to the land. And as to there being no appreciable damage, independently of that done to the buildings, what does the word "appreciable" mean as applied to such a case? What did the jury understand it to mean, when they found that the land would have sunk had there been no buildings on it, but that the plaintiff would have suffered no "appreciable" damage? Is the word in such case to import "money value?" If so, there is practically an end of the rule of law, that a man has a right to have his land in its ordinary state maintained in situ, free from the molestations of his neighbour. For it will be difficult for any jury to carry their minds back to the land in its primitive condition, and to conceive "appreciable" damage, except where a tract would have been engulfed altogether, or some such disaster taken place. And to shew how this would operate, let us take the case of a field of grass land, and suppose a very small portion of it to have been caused to sink a few inches, in consequence of the adjoining owner digging a hole to such a depth and in such a place as to disturb the ordinary lateral support of the land. There might be no "appreciable" damage to the land as grass land, and yet, had the proprietor built a house upon his land, in part resting on the portion of land that subsided, then there might be serious injury to the building, though it exerted no lateral pressure *beyond* that of the land itself in its ordinary state and condition. Of course, if the building sank before the excavation reached that point which would have caused the land to sink, standing alone, and the structure was modern, the plaintiff could not, according to our law, complain, however careless his neighbour might have been in his proceedings, because then it would be obvious that the house was resting on additional lateral pressure, to which a prescriptive right had not been acquired. But all this would be for the jury to say how it happened. Now, would it not be in accordance with the law to tell the jury, in such cases, that if the land would have sunk without the buildings upon it, they must, at all events, give nominal damages for that injury; and if they found that the buildings were damaged as a necessary consequence, they must give compensation for such damage also?

And this would be no more than ruling, that if a man commits an infraction of the law, he must be held liable for the consequences that necessarily result from it. And, on the general merits of this class of cases, there is no reason why the excavating owner should not be held strictly to the law. As it is, the law of England will be found to be more indulgent to him than that of other countries. It is a reckless sort of thing, for a man to excavate to the edge of his own land without taking any precaution against letting down his neighbour's house. And, in the instance of the well, it would have been an easy matter for the contractor not to have "filled it up with such loose earth that the ground round it sank," and, by a little care, to have avoided all injury to his neighbour.

We hope that the subject will come again before the learned judges, and obtain further consideration from them, for it is one of great importance, and nowhere more so than the metropolis itself, which is being worked through in divers parts and places, in the course of railway enterprise, by contractors and other persons engaged in the works, without any very nice and scrupulous regard to the rights of adjoining owners.

LIS PENDENS.

We have been reminded that in our article on this subject, published last week, we did not refer to the 114th section of the Companies Act, 1862, which is supposed to have suggested the registration of winding-up petitions as *lites pendentes* against alleged contributories. We now repair the omission. But before we cite that remarkable enactment, it will be convenient to repeat that the sole operation of the act for registering suits is upon unregistered suits, for it simply enacts that "no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until it is registered;" in other words, that notice of an unregistered suit shall not be implied as against a purchaser or mortgagee. That being so, the 114th section of the Companies Act, 1862, enacts as follows:—

"Any petition for winding up a company by the Court under this act shall constitute a *lis pendens*, within the terms of the act passed in the session holden in the 2 & 3 Vict. c. 11, intituled 'An Act for the better Protection of Purchasers against Judgments, Crown Debts, *Lis Pendens*, and Fiats in Bankruptcy,' provided the same is duly registered in manner required by such act concerning suits in equity."

It would be superfluous to observe that "such act" uses the expression "*lis pendens*" only, and does not say a word about suits in equity, to which, indeed, the doctrine, that every one is presumed to have notice of pending litigations, is not limited. This 114th section, if one may venture to guess at what was "passing in the mind" of the draftsman, was probably intended to effect the superfluous object of declaring that all persons should be deemed to have notice of a pending suit or petition to wind up a company so far as regards their dealings with any person against whom it should be registered. What he has said is, that a registered petition for winding up shall, *if it is registered*, be a *lis pendens*, within an act which has no operation upon a *lis pendens* which is registered; and has thus performed the not very difficult feat of uttering absolute nonsense.

But as every clause in an act of Parliament is presumed to have some meaning and operation, it is not surprising that this foolish clause has created a little alarm.

STAMPING INDORSED RECEIPTS.

We find the following in "The Solicitor's Journal" of Oct. 20:—

Sheriffs' Court.—(Before Mr. Gibbons).

Oct. 15.—*Whitmore v. Lee & Fry*.—This was an action to recover the balance of a promissory note, and plaintiff handed the document in to the court.

Upon examining the bill, his Honor said:—"I do not know that it is not my duty to send this document to Somerset House.

"Plaintiff.—Why, Sir?

"His Honor.—Because you are liable to a penalty of 10*l*. Here is a receipt on the back of the note for more than 40*l*s. in one sum.

"Plaintiff.—The note is stamped.

"His Honor.—I am not alluding to the stamp on the note, but to the receipt on the back of the note. Here is a receipt for a sum over 40s., and there is no stamp on the back of the note.

"Plaintiff.—Such an objection has never been raised on any previous occasion.

"His Honor.—I cannot help that. It is my duty to take notice of the fact.

"Plaintiff.—We have done the same thing for many years, and we had no idea it was wrong. We always thought the stamp on the promissory note protected the receipt.

"His Honor.—It is clear it does not, and you are liable to a penalty of 10l."

The usual order was then made, but his Honor desired the registrar to impound the note, which may in due course find its way to the authorities or to Somerset House.

We presume that the promissory note has been returned to the court, with a reference to the following:—"Exemption from the preceding duties on receipts" under the title "RECEIPTS" in the schedule to the General Stamp Act (55 Geo. 3, c. 184):—

"Receipts or discharges written upon promissory notes, bills of exchange, drafts, or orders for the payment of money, duly stamped according to the laws in force at the date thereof, or upon bills of exchange drawn out of, but payable in, Great Britain."

We believe that this exemption has not been repealed by any of Mr. Gladstone's innumerable Stamp Acts.

REGULA GENERALIS.

ORDER OF COURT.—Oct. 6, 1866.

The Right Hon. FREDERICK BARON CHELMSFORD, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Hon. JOHN LORD ROMILLY, Master of the Rolls, and the Hon. the Vice-Chancellor, Sir RICHARD TORIN KINDERSLEY, doth hereby, in pursuance of the stat. 15 & 16 Vict. c. 86, and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following:—

1. Art. 1 of rule 10 of Order 33 of the Consolidated General Orders, and rules 12 and 13 of the same Order, shall be respectively varied, and as varied shall be respectively read as follows:—

Art. 1 of rule 10 of Order 33, and rule 12 of the same Order, shall be respectively read as if the words "or set down a motion for a decree or decretal order," were expunged therefrom respectively, and in lieu of those words, the words "or serve a notice of motion for a decree or decretal order," were inserted therein respectively;

And rule 13 of the same Order shall be read as if the words "unless a motion for a decree or decretal order shall have been set down in the meantime" were expunged therefrom, and in lieu of those words, the words "unless a notice of motion for a decree or decretal order shall have been served in the meantime" were inserted therein.

2. The plaintiff, who has served a notice of motion for a decree or decretal order, shall set down such motion within one week after the expiration of the time allowed to him by rule 7 of Order 33 to file his affidavits in reply, in case the defendant shall have filed any affidavit, or within one week after the expiration of the time allowed to the defendant, by rule 6 of Order 33, to file his affidavits in answer, in case the defendant shall not have filed any affidavit. But in case the time allowed for either of the purposes afore-

said shall be enlarged, then within one week after the expiration of such enlarged time.

3. If the plaintiff shall fail to set down the motion within the time above limited, the defendant may either move to dismiss the bill with costs, for want of prosecution, or set the motion down at his own request.

4. The Clerk of Records and Writs shall not give a certificate that a motion for a decree or decretal order is in a fit state to be set down until after the expiration of the time allowed to the plaintiff, by rule 7 of Order 33, to file his affidavits in reply, in case the defendant shall have filed any affidavit, or until after the expiration of the time allowed to the defendant, by rule 6 of Order 33, to file his affidavits in answer, in case the defendant shall not have filed any affidavit. But in case the time allowed for either of the purposes aforesaid shall be enlarged, then not until after the expiration of such enlarged time.

5. In all cases in which the time allowed by rules 6 and 7 of Order 33 for filing affidavits in answer or in reply shall be enlarged, notice thereof shall be given to the Clerk of Records and Writs by production of the order for such enlargement.

CHELMSFORD, C.
ROMILLY, M. R.
RICHD. T. KINDERSLEY, V. C.

Court Papers.

NISI PRIUS SITTINGS, IN AND AFTER
MICHAELMAS TERM, 1866.

Court of Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Monday.. Nov. 5	There will not be any sittings during term in London.
2nd sitting, Monday 12	
3rd sitting, Monday 19	

After Term.

Tuesday	Nov 27	Tuesday	Dec. 11
The Court will sit at ten o'clock every day.			

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Court of Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Monday	The Court will not sit in London during term.
Monday	
Monday	

After Term.

Tuesday	Nov. 27	Monday	Dec. 10
The Court will sit during and after term at ten o'clock.			

Exchequer of Pleas.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Monday.. Nov. 5	The Court will not sit in London during term.
2nd sitting, Monday 12	
3rd sitting, Monday 19	

After Term.

Tuesday	Nov. 27	Monday	Dec. 10
The Court will sit during and after term at ten o'clock.			

The Court will sit in Middlesex, in term, by adjournment from day to day until the causes entered for the respective Middlesex Sittings are disposed of.

COMMON-LAW CAUSE LISTS, MICHAELMAS
TERM, 1886.

Court of Queen's Bench.

NEW TRIALS.

FOR JUDGMENT.

Durham—Ecclesiastical Commissioners for England v. Peart

Midd.—Feltham v. England
 Lond.—Sandeman v. Scurr
 Durham—Readhead v. Midland Railway Co.

FOR ARGUMENT.

Moved Easter Term, 1886.
 Ches.—Hughes v. Birkenhead Improvement Commissioners (First action, to be argued with D. Stands over)
 — Same v. Same (Second action, Ditto)

— Davies v. Same (Ditto)

Moved Easter Term, 1886.
 Lancaster—Martin v. Smalley & an. (Stands for arrangement)

Moved Mich. Term, 1886.
 Lond.—Morgan v. Chetwynd

Moved Hil. Term, 1886.

Midd.—Falcke v. Gooch

— Wood v. Boosey

Lond.—Webb v. Rennie

Moved Easter Term, 1886.

Lond.—Hyams v. Webster

— Ingram v. Fleming

— Rein v. Lane & ors.

Northumberland—Hughes & an. v. Straker & ors. (Stands over)

Liverpool—Wilson & an. v. Bank of Victoria
 Leeds—Harris v. Woeler

Tried during Term.

Midd.—Cannon v. Calvert

Moved Trin. Term, 1886.

Midd.—Smith v. Blakey

(Tried during term)

— Perkin v. Dakin & an.

— Double v. Pullbrook.

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR JUDGMENT.

* Bryant v. Foot

† Ecclesiastical Commissioners for England v. Peart

* Lawrence v. Hitch

FOR ARGUMENT.

† Hughes v. Birkenhead Improvement Commissioners (New Trial to be argued with this D. Stands over)

† Same v. Same (Ditto)

† Davies v. Same (Ditto)

† Jolwald v. Continental Bank Corporation (Limited) (St. over)

† Tydeman v. Carne (Stands over)

† Hetherington v. Hicks (St. over)

† Keyes & an. v. Edwards & ors. (Sp. C. to be stated)

† Duffett & ors. v. Hutchings

† Ireland & ors. v. Livingston

† Lund v. Winfield

† Bailey v. Bowen

* Jupp v. Cook

† Hulse v. Whitworth

* Hancock v. London & Ham-
 burgh & Continental Ex-
 change Bank (Limited)

* Reynolds v. Bowly & an.

† Hunter v. Wykes

Radford v. Potts (Appeal from
 County Court of Warwick)

* Tyson v. Jones & ors.

Cowell v. Lucas & ors. (Ap-
 peal from County Court of
 Bradford, Yorkshire)

* Broomhead v. Bolton

† Gibbons v. Ware, Hadham,
 & Buntingford Railway Co.

† Solomon v. Finigan

† Darglish & ors. v. Tennent

† Northouse v. Cane

† Holden v. Whittingham

* Hubbersty v. Manchester,
 Sheffield, and Lincolnshire
 Railway Co.

* Palmer v. Kingston

* Wilson & an. v. Prowse

* Hill v. Gare & an.

* Elliott v. Johnson

† Coxon v. Sorensen

† Nicoll v. Watts

* Richards v. James

* Sharpe v. James

* In re Sparke v. Hollings-
 worth

* Lord Fitzhardinge v. Prit-
 chett & ors.

† Collarson v. Skinner

* Hansworth v. Limner

† Crowhurst v. Pitcher

† Crosby v. Brandt

† Marks v. Wearing

† Hooper & an. v. Clark

† Eugg v. Gaze

† Crofts v. Haldane & an.

† Phillips & ors. v. Green

† Baldwin v. Rymer

* Sale & ors. v. Sheffield Ge-
 neral Cemetery Co. and 14
 other cases

* In re Adam Johnston Farrie

† Galsworthy v. Turner

† Dixon v. Lord Lecanfield

† Brightman v. M'Henry

† St. David's Gold Mining Co.
 (Limited) v. Bridell

* Biglin v. Wylie & ors.

* Huston v. Rde

* Proudfoot v. Montefiore,
 Bart.

* Alston & an. v. Bagehaw

* Panama, &c. Co. v. Lord
 Kennedy

* Lord Kennedy v. Panama,
 &c. Co.

ENLARGED RULES.

First Day.

Reg. v. Lucas Marshall Bennett.

CROWN PAPER.

Lancashire Trustees of the Duke of Bridgwater v. Sur-
 veyors of Highway for the Township of
 Bootle-cum-Linacre.

London Reg. v. Treasurer of St. Bartholomew's
 Hospital.

Buckinghamshire Pearce v. O'Brien (First information).

— v. O'Brien (Second information).

Yorkshire Reg. v. Smith.

Buckinghamshire Bolton v. Hodgkinson.

Weymouth Reg. v. Ayling.

Durham Wood v. Bowron.

— O'Hare v. Craggs.

Lincolnshire Wray & an. v. West.

Cambridgeshire.. Whittlesford Tradesmen's Benefit Society
 v. Runham.

Sussex Reg. v. Guardians of the Poor of Battle
 Union & ors.

Essex Bruce v. Deant.

Metropolitan Po- } Wells v. Hubble.

lice District .. } Peters v. Stavely.

— Lewis v. Jewhurst.

Sunderland Reg. v. Kidd.

Preston Backhouse.

Darlington Morton.

Cumberland Inhabitants of Sherford & ors.

Devonshire Loynds v. Potts.

Blackburn Youngman v. Morris.

Hertfordshire ... Reg. v. Vissani.

Middlesex Sharp v. Smith.

Yorkshire Hornby v. Close.

— Reg. v. Lord Mayor of the City of London.

Wiltshire Churchwardens of Easton v. Churchwar-
 dens of St. Mary, Marlborough.

Liverpool Hodgson v. Liverpool New Market Co.

Gloucestershire.. Great Western Railway Co. v. Overseers
 of the Parish of Badgworth.

Lincolnshire Green v. Great Northern Railway Co.

Buckinghamshire Reg. v. Wycomb Railway Co.

Metropolitan Po- } Vestry of the Parish of St. George-the-
 lice District .. } Martyr, Southwark, v. Pethebridge.

Brighton Brighton Local Board of Health v. Stan-
 ning.

Cumberland Dixon v. Steel.

Somersetshire .. Reg. v. Brannan.

Durham Hodgson v. Graveling.

Blackburn Kenyon & an. v. Wilkinson.

England Reg. v. Knowles.

Lancashire Same.

Yorkshire Barnsley Local Board of Health v. Sedg-
 wick.

Metropolitan Po- } Taylor v. Metropolitan Board of Works.

lice District .. } Reg. v. Whitley.

Middlesex Commissioners of Faversham Navigation

Kent v. Assessment Committee of the Faver-
 sham Union.

Monmouthshire .. Rhodes v. Thomas.

Middlesex Reg. v. London and Blackwall Railway Co.

Oxfordshire Watson v. Coates.

Hertfordshire ... Kingale v. Wilson.

Yorkshire Thornton v. Nutter.

Lancashire Paley v. Birch.

Metropolitan Po- } Allen v. Baldock.

lice District .. } Mackay v. Marchant.

— Haring v. Mayor of Stockton.

Stockton Watkins v. Surveyors of Lowton.

Lancashire v. Surveyors of Burtonwood.

Court of Common Pleas.

NEW TRIALS.

FOR ARGUMENT.

Moved Mich. Term, 1883.
 Midd.—Packer & an. v. The Great Western Railway Co. (To stand over till Beal v. South Devon Railway Co. in the House of Lords is disposed of)
Moved Hil. Term, 1886.
 Midd.—Gilbert v. Hassall (Proceedings stayed by injunction from the Court of Chancery)

Moved Easter Term, 1886.

Beds.—Beckett v. Midland Railway Co.
 Manchester—Negroponte v. Crossley & ors. (To stand over for arrangement)
Moved Trin. Term, 1886.
 Midd.—Deffall & another v. White
 — Gillett v. Stones
 — Eilston v. Deacon
 Lond.—Kitchen & another v. Hawkins.

SPECIAL PAPER.

Friday, Nov. 9.

Johnson & an. v. Royal Mail Steam-packet Co. (Case at Nisi Prius, set down by order)
 Consolidated Bank (Limited) v. Smith (D, to be argued with special case)
 Frith & ors. v. Guppy (D)
 Lawrence v. North London Railway Co. (D, to stand over till issues in fact tried)
 Mills v. Mayor of Colchester (Case at Nisi Prius)
 National Discount Co. (Limited) v. Contract Corporation (Limited) (D, stand over, deft. Corporation being wound up)
 Lingwood v. Gyde—Gyde v. Lingwood (Case by Copyhold Commissioners)

Coward v. Gregory (D)
 Contract Corporation (Limited) v. Bateman (D, stand over, pliffs. Corporation being wound up)
 Mayor of Hereford v. Morton (App. from justices)
 Bracewell v. Williams (D)
 Myers v. Wigram (D)
 Fetherby v. Metropolitan Railway Co. (D)
 Joly v. Dixon (D)
 Gray & an. v. Gibson (Case by arbitration, part heard)
 Randolph & an. v. Milman (Case by order)
 Derby v. Humber (County Court Appeal)
 Whitstable Fishery Co. v. Foreman (Case from arbitration)
 Yeoman v. Ellison (County Court Appeal).

ENLARGED RULES.

First Day.

In re Odey, ex parte Tucker

Generally.

Orus & an. v. Akired.

CUR. ADV. VULT.

Guppy & an. v. Frith & ors.
 Sheldon v. Mayor of Staley Bridge

Lane & an. v. Nixon
 Smith v. Littledale
 Budenberg v. Roberts.

Court of Exchequer.

SITTINGS—MICHAELMAS TERM.

Days in Term.

Banc.

Friday	Nov. 2	Motions.
Saturday	3	Errors and Motions.
Monday	5	.....
Tuesday	6	.....
Wednesday	7	Special Paper.
Thursday	8	.....
Friday	9	Lord Mayor sworn.
Saturday	10	Criminal Appeals.
Monday	12	Special Paper.
Tuesday	13	Sheriffs nominated.
Wednesday	14	Special Paper.
Thursday	15	.....
Friday	16	.....
Saturday	17	.....
Monday	19	Special Paper.
Tuesday	20	.....
Wednesday	21	.....
Thursday	22	.....
Friday	23	.....
Saturday	24	.....
Monday	26	.....

Days in Term.

Monday	Nov. 5	Middlesex, first Sitting.
Monday	12	Middlesex, second Sitting.
Monday	19	Middlesex, third Sitting.

Nisi Prius.

NEW TRIALS.

FOR JUDGEMENT.

Lond.—Noble v. Trueman
 — Restall v. London and South-western Railway Co.
 Nottingham—Ward & ors. v. Moss
 Chester—Simcock v. Lee

FOR ARGUMENT.

Moved Hil. Term, 1884.
 Liverp.—Brabner v. Macann (To stand over till special case settled)
Moved Hil. Term, 1886.
 Lond.—Juniper v. Vestry of

Bermondsey (To stand over till after the decision of a case in error)

Moved Easter Term, 1886.

Lond.—General Steam Navigation Co. v. British Colonial Steam Ship Co. (To stand over till after argument of special case)
 — Noble & an. v. Trueman & an.

Moved Mich. Term, 1886.

Midd.—Jonsiffe v. Bayley.

SPECIAL PAPER.

FOR ARGUMENT.

Cooke v. Mostyn & ors. (D. Part heard 14th Nov. 1884. To stand over till after issues in fact tried)	Vestry of the Hamlet of Mile End Old Town, Midd., v. Humber (D. Part hd. 2nd May, 1886. To stand over till after issues in fact tried)
Campbell v. Dufaur (D. Part heard 18th January, 1886. To stand over till issues in fact tried)	Bamford & an. v. London, Brighton, and South Coast Railway Co. (D. 30th May. Part heard. To stand over till after issues in fact tried)
Ball v. Nash (D. Part heard 20th Nov. 1885. To stand over till after amendment of declaration)	London Mercantile Discount Co. (Limited) v. Kintrea (D. Part heard 30th May, 1886. To stand over for parties to consider whether the cause shall be referred).
Cavell & an. v. Prince (D. Part heard 30th April, 1886. To stand over till after trial of issues in fact on 3rd plea)	

ERRORS AND APPEALS.

Ellissen v. Joras (Error)
 Taylor v. Chichester Midland Railway Co. (Error)

Wilson v. Jones (Ap.)
 Noble v. Ward (Ap.)

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dealing with the sewerage, and of preventing its becoming either a nu-
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LONDON, NOVEMBER 3, 1866.

WE may rely on the good sense of the Attorney-General for safety, during his tenure of office, from any ill-considered scheme for digesting or codifying the law; but the codification of a considerable part of the statute law, and the digesting of the remainder of the law, cannot be deferred much longer; and in the meantime it is desirable that practical lawyers, who alone are capable of coming to a sound conclusion on the subject, should seriously set about the investigation of the principles which determine the best form for the expression of a highly complex system of law like our own, with a view at once to certainty and facility of interpretation and application, and to growth and amendment. We are, therefore, glad to see, in the part of the transactions of the Juridical Society recently published, a paper "On digests and codes, with reference to law reform," by Mr. F. Vaughan Hawkins; and with a view to promote the discussion of this important subject, we propose to give some account of, and to offer some remarks on, the contents of that paper.

This question of the arrangement and expression of the law has of late been so much discussed by people, who have talked very freely and dogmatically of digests and codes, but have not taken the trouble to arrange and clearly define their own very moderate stock of ideas on the subject, that Mr. Hawkins finds it expedient in the first instance to define the expressions "digest" and "code," ancient though they be, and were once well understood. By a digest he means, as every one means who has any knowledge of formal jurisprudence, "the collection and arrangement, on a systematic plan, of the materials of existing law, common as well as statute, without alteration of expression." By a code, "the restatement or re-expression of the same materials in a systematic form." "A digest," he adds, "in this sense, is the result of two processes, expurgation and arrangement. A code introduces a third, viz. re-expression." But the re-expression may be various in form; and in one form, of which we have had an example in the Indian Code, the code may simulate a digest, for Mr. Hawkins includes in his notion of a code, "the systematic expression of the law contained in the digest, reduced to the threefold shape into which all that is valuable in law may be analysed, viz.—first, *rules* of law; secondly, *examples* of rules; and, thirdly, *reasons* or grounds of rules." It is obvious, that the two last divisions of a code differ only historically from a digest. The most valuable part of a digest is culled from the natural growth during centuries of a settled administration of law according to precedent. The Indian Code, having no such historical origin, was supplied with fictitious cases, under the name of examples, imagined by its framers, or borrowed from the actual precedents of another country. To these Mr. Hawkins would add, what the Indian Law Commissioners have refrained from giving, "*reasons*," in the form of selections or

extracts from the judgments of eminent judges, indicating the *rationes decidendi*.

A code, thus illustrated and explained is, the writer thinks, a pressing want of the present epoch, and in order to supply it he recommends the course of procedure so often suggested, of the formation of a complete digest of case and statute law, in the first instance, and as preliminary to gradual codification, with the immediate result of a combination, or rather identification, so far as they overlap, of the subjects of law equity.

We concur in the recommendation of a digest of the statute and common law, but, as an end, and not as a step towards the formation of a code, and we shall conclude our notice of the paper before us with some remarks on the only part of it of which we have not yet given an account, the writer's reasons for considering a code to be practicable and desirable in this country. He sets aside the warning from the experience of past experiments in that direction, as not being in point, because, he says, they have all been *a priori* creations of the closet, and not compilations from the existing bodies of law. In this assertion, however, we think that he is mistaken. Both the Code of Justinian and the Code Napoleon were, for all the purposes of the present discussion, compilations from the existing bodies of law, and were not in any sense speculative abstractions.

Mr. Hawkins notices the distinction that has been taken between the common law and a code, but we think he has failed to appreciate it. He says (referring to papers on codification already published in the transactions of the Juridical Society), that "The common law is there asserted to be a law of *principles*, in contradistinction to a code, which is said to be a law of *language*," and remarks, that this does not truly mark the difference between the earlier and the later stages of case law. "The legislator, whether judicial or otherwise, is a man of principles *before* he has legislated, but when he *has* legislated he must necessarily be a man of language;" and he proceeds to point out, that in the earlier growth of a system of law, there is much opportunity for judicial legislation and "the application of principle;" but that as society advances the judge has less and less to do with the making of law; and "then arise complaints, which are, indeed, inevitable, that precedent has usurped the place of principle, and while the bulk of law swells faster than ever, from the ever increasing multiplication of small points of detail as the transactions of life become more complicated, the substantial additions to the body of law become less and less, and the trammels of precedent are found to be not less rigid, and far more perplexing from their inconsistencies, than the authoritative language of a code."

Here the writer has obviously lost sight of the question to be considered, which relates, not to legislation or the growth of the substance of the law, but merely to the expression of law; whether it is best, in any given state of society, that its laws should be expressed mainly in the form of judicial precedents, or mainly in the form of legislative enactments; the objection to the latter, urged in the papers referred to, being,

that they involve the uncertainty and incompleteness incident, by reason of the imperfection of human conception and of language, to all abstract propositions; and the recommendation of the former being, that they depend in no degree on accuracy of expression or even completeness of conception, but offer examples or "instances," to use Bacon's expression, from the comparison and investigation of which a principle may be inferred with certainty and precision comparable to the certainty and precision of the investigation of the laws of nature. The essential distinction between case law and statute law exists at all periods of their growth; in their most complete development as in their earliest rudiments. In an advanced state of society, the law, whether expressed in a code or resting on precedent, consists of a multitude of small details, but the difference, that a rule expressed in a code is limited in its accuracy and completeness by the powers of conception and expression possessed by the framer of the rule, while a similar rule deduced from a precedent or cluster of precedents is subject to no such imperfection, is equally a difference in favour of the judiciary rule, whether it takes a wide sweep or is confined to a minute detail.

To insist on the "superior plasticity or flexibility" of judiciary law, then, is merely to assert, that at any given stage in its history it is more fitted for the certain and consistent determination of new cases or questions than a code, the reason being, that the rule to be applied is found by induction and analogy, instead of being fixed in a formula, which, whether it be vague or precise, equally forbids any resort to analogy, or, indeed, to reasoning in any shape. Mr. Hawkins, however, treats the process of induction from precedents as a distinct topic. He says—

"Again, the opponents of codification have dwelt much on what has been termed the greater certainty of 'induction from precedent,' as opposed to the study of a rule expressed in terms; or, as I find it stated in a review of Mr. Austin's recently published *Notes of Lectures*, that 'the process of induction from particulars leads to more certain results than that of applying a rule authoritatively expressed in abstract terms, and is more instructive to the lawyer, who, being compelled, in learning his law, to discriminate and to observe how the Courts have discriminated between the forms and accidents and the substance of a case, is better trained for performing the same task when he applies the law.' The term 'induction' is, it seems, employed by Mr. Austin to denote the process of extracting a rule of law from a particular case, by abstracting or eliminating the facts not essential to the decision, and discovering those on which the judgment depended; but I confess that, with deference to so great an authority, I think the term somewhat calculated to mislead, for if employed at all, it would seem appropriate rather to the process of making law in the way of judicial legislation, by analogy, than in relation to the process of ascertaining what existing law is, which is essentially an *interpretative* or syllogistic process—a process, that is, from a general rule to particulars, and not, like induction, from one particular to another. However, the meaning of the reviewer's ob-

jection is, that it is more easy to collect with precision from the whole account of a reported case, including the statement of facts, arguments, and judgment, what the exact rule of law decided by the case is, than from reading the rule itself, authoritatively expressed in the pages of a code. I must say, I demur in toto to this assertion. I maintain, on the contrary, that what I may almost call the *master vice* of case law—the defect which the most rigid system of pleading fails wholly to remove, and which, in the absence of such a system, becomes well nigh intolerable—is the impossibility of fixing, beyond the chance of subsequent dispute, what the exact point—the quantum of law—decided by a case, really is."

Induction is the process of inferring, with respect to the whole of a class, something which has been ascertained with respect to some individuals of that class; and the process, as described in great detail and with many illustrations in the *Novum Organum*, consists in comparing as many various instances or individual cases as can be collected or are thought sufficient for the occasion, eliminating the circumstances not common to all, and thus finding whether the attribute in question is or is not invariably associated with the given attributes or conditions of the class. This is a strictly logical process only when the examination is exhaustive and includes every member of the class, the class itself being also comprehensive and including every condition not eliminated in the comparison. There can be no induction from a single case. An action is brought by a Jew against a Christian to recover damages for non-performance of a verbal promise to convey a house to the plaintiff on the 25th December, and judgment is given for the defendant. If a reason for the decision is given, though in incomplete or even inaccurate terms, there can scarcely be any doubt as to the point decided. The facts of the case limit and correct the judgment. If no reason is given, we can learn nothing from this single case. The ground of decision may have been, that the promise was made to a Jew; or that it was made without consideration; or that it was not in writing; or that it was to be performed on Christmas-day, &c. It is only on comparison with cases in other contracts with Jews—on other contracts without consideration—on other contracts to be performed on Christmas-day, &c.—that the principle of decision in each case appears, so far as it is left to be inferred or induced from the particulars. As a matter of experience, we emphatically deny that the interpretation of cases is liable to any considerable amount of uncertainty. No doubt there is much rubbish in the reports, but excluding from consideration those reported cases which are practically neglected as being cases which ought not to have been reported or are obviously ill-reported, we assert with confidence, that as to more than nine-tenths of the reported cases, there is no doubt, and no possibility of doubt, concerning the ratio decidendi. Whether the decision was right is another question. On the other hand, our experience of legislation has been, that it is seldom possible to rely on a private interpretation of a new statute, and that every act of Parliament is a snare and not a guide until its meaning

has been settled by *precedents*. The Succession Duty Act is often pointed to as a model of skill and completeness, yet it has given rise to a multitude of doubts, and many main and important questions on its meaning are still unsettled.

We trust that no attempt will be made to recast the law until it is generally understood and acknowledged by all who profess to have formed an opinion on the subject, that, in the language of the reviewer cited by Mr. Hawkins, "the law can only be a science in so far as it exists in the judiciary form, and that its scientific character would be destroyed by codification, and could only be restored by a long series of judicial comments on the code." (9 Jur., N. S., part 2, p. 342).

Court Papers.

EQUITY SITTINGS, MICHAELMAS TERM, 1866.

Before the LORD CHANCELLOR.

At Westminster.

Friday..... Nov. 2 Appeal Motions and Appeals.

At Lincoln's Inn.

Saturday	3	Petitions and Appeals.
Monday.....	5	
Tuesday.....	6	Appeals.
Wednesday ...	7	
Thursday	8	Appeal Motions and Appeals.
Friday	9	
Saturday	10	
Monday.....	12	Appeals.
Tuesday	13	
Wednesday	14	
Thursday	15	Appeal Motions and Appeals.
Friday	16	
Saturday	17	
Monday.....	19	Appeals.
Tuesday.....	20	
Wednesday	21	
Thursday	22	Appeal Motions and Appeals.
Friday	23	Appeals.
Saturday	24	Petitions and Appeals.
Monday.....	26	Appeal Motions and Appeals.

Before the LORDS JUSTICES.

At Westminster.

Friday..... Nov. 2 Appeal Motions.

At Lincoln's Inn.

Saturday	3	Petitions in Lunacy, Appeal Petitions, and Appeals.
Monday.....	5	
Tuesday.....	6	Appeals.
Wednesday ...	7	
Thursday	8	Appeal Motions and Appeals.
Friday	9	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	10	Appeals.
Monday.....	12	
Tuesday	13	Appeals from the County Palatine of Lancaster and Appeals.
Wednesday	14	Appeals.
Thursday	15	Appeal Motions and Appeals.
Friday	16	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	17	
Monday.....	19	Appeals.
Tuesday.....	20	
Wednesday	21	
Thursday	22	Appeal Motions and Appeals.
Friday	23	Petitions in Lunacy, Appeal Petitions, and Appeals.

Saturday

Monday.....

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Westminster.

Friday..... Nov. 2 Motions and General Paper.

At Chancery-lane.

Saturday	3	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	5	
Tuesday	6	General Paper.
Wednesday ...	7	
Thursday	8	Motions and General Paper.
Friday	9	General Paper.
Saturday	10	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	13	
Tuesday	13	General Paper.
Wednesday	14	
Thursday	15	Motions and General Paper.
Friday	16	General Paper.
Saturday	17	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	19	
Tuesday.....	20	General Paper.
Wednesday ...	21	
Thursday	23	Motions and General Paper.
Friday	23	General Paper.
Saturday	24	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	26	Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Westminster.

Friday..... Nov. 2 Motions.

At Lincoln's Inn.

Saturday	3	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	5	
Tuesday.....	6	General Paper.
Wednesday ...	7	
Thursday	8	Motions, Adjourned Summonses, and General Paper.
Friday	9	Petitions, Adjourned Summonses, and General Paper.
Saturday	10	Short Causes, Adjourned Summonses, and General Paper.
Monday	12	
Tuesday.....	13	General Paper.
Wednesday	14	
Thursday	15	Motions, Adjourned Summonses, and General Paper.
Friday	16	Petitions, Adjourned Summonses, and General Paper.
Saturday	17	Short Causes, Adjourned Summonses, and General Paper.
Monday.....	19	
Tuesday.....	20	General Paper.
Wednesday ...	21	
Thursday	22	Motions, Adjourned Summonses, and General Paper.
Friday	23	Petitions, Adjourned Summonses, and General Paper.
Saturday	24	Short Causes, Adjourned Summonses, and General Paper.
Monday.....	26	Motions, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART**At Westminster.*

Friday Nov. 2 Motions.

At Lincoln's Inn.

Saturday 3 Petitions, Short Causes, and Causes.

Monday 5

Tuesday 6 Causes.

Wednesday 7

Thursday 8 Motions and Causes.

Friday 9 Petitions and Causes.

Saturday 10 Short Causes and Causes.

Monday 12

Tuesday 13 Causes.

Wednesday 14

Thursday 15 Motions and Causes.

Friday 16 Petitions and Causes.

Saturday 17 Short Causes and Causes.

Monday 19

Tuesday 20 Causes.

Wednesday 21

Thursday 22 Motions and Causes.

Friday 23 Petitions and Causes.

Saturday 24 Short Causes and Causes.

Monday 26 Motions and Causes.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.**At Westminster.*

Friday Nov. 2 Motions.

At Lincoln's Inn.

Saturday 3 Petitions, Short Causes, Adjourned Summonses, and General Paper.

Monday 5

Tuesday 6 General Paper.

Wednesday 7

Thursday 8 Motions and General Paper.

Friday 9 General Paper.

Saturday 10 Petitions, Short Causes, Adjourned Summonses, and General Paper.

Monday 12

Tuesday 13 General Paper.

Wednesday 14

Thursday 15 Motions and General Paper.

Friday 16 General Paper.

Saturday 17 Petitions, Short Causes, Adjourned Summonses, and General Paper.

Monday 19

Tuesday 20 General Paper.

Wednesday 21

Thursday 22 Motions and General Paper.

Friday 23 General Paper.

Saturday 24 Petitions, Short Causes, Adjourned Summonses, and General Paper.

Monday 26 Motions and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

EQUITY CAUSE LISTS, MICHAELMAS TERM, 1866.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—A. Abated—Adj. Adjourned—A. T. After Term—Ap. Appeal—C. D. Cause Day—Cl. Claim—C. Costs—D. Demurrer—E. Exceptions—F. C. Further Consideration—F. D. Further Directions—M. Motion—M. D. Motion for Decree—P. C. Pro Confesso—Pl. Plea—Ptn. Petition—R. Rehearing—Sp. C. Special Case—S. O. Stand Over—SA. Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Att.-Gen. v. Master, Fellows, and Scholars of Sydney Sussex College, Cambridge (R., Jan. 17) L. C. Part heard

Same v. Same (R., Jan. 17) L. C. Part heard

Harries v. Rees (S., Jan. 18) L. C.

Eaton v. Frances (S., Feb. 8)

Morris v. Llanelly Railway & Dock Co. (S., Feb. 13)

Baxter v. Oliver (R., Feb. 26)

Thomas v. Daw (K., Feb. 26) L. C.

Ferguson v. Wilson (S., March 1)

Homfray v. Fothergill (S., March 2)

Drennan v. Andrew (K., March 3) L. C.

Roberts v. Roberts (S., March 7)

Duddell v. Simpson (S., March 15)

Knox v. Gye (W., March 16) L. C.

Company of Proprietors of the Sheffield Waterworks v. Yeomans (K., March 21) L. C.

Butt v. Imperial Gas-light & Coke Co. (K., March 24) L. C.

Minton v. Kirwood (S., March 26)

Western v. M'Dermot (R., March 28)

Buckland v. Papillon (R., April 5)

Thompson v. Marquis of Normandy (S., April 6)

Waters v. Earl of Shaftesbury (S., April 13)

Procter v. Robinson (R., April 14)

Tate v. Williamson (W., April 14) L. C.

Binney v. Ince Hall Coal and Cannel Co. (K., April 14) L. C.

Kay v. Hargreaves (S., April 17)

Harvey v. Clarke (R., April 17)

Kendall v. Watson } (S., Watson v. Kendall } April 19)

Gordon v. Gordon (S., April 19)

Fryer v. Davies (R., April 23)

Walmesley v. Pilkington (R., May 1)

Johnstone v. Hamilton (S., May 2)

Raphael v. Thames Valley Railway Co. (R., May 5)

Pettinger v. Ambler } (R., Bunn v. Pettinger } May 7)

Forsbrook v. Forsbrook (S., May 8)

Earl Howe v. Earl of Lichfield (R., May 8)

Cooper v. Cresswell (K., May 8) L. C.

Cook v. Glass (S., May 8)

Bovill v. Goodlor (R., May 24)

Lewer v. Earl of Shaftesbury (W., May 28) L. C.

Cubitt v. Cooper (W., June 6) L. C.

Paich v. Ward (S., June 8)

Martin v. Headon (K., June 9)

Thorpe v. Mattinson (S., June 19)

Calcraft v. Thompson (R., June 21)

Belaney v. Belaney (R., June 22)

Masey v. Masey (W., June 29)

Hancock v. Reeves (R., June 30)

Bann v. English and Foreign Credit Co. (Limited) (R., July 4)

Ennor v. English and Foreign Credit Co. (Limited) (R., July 4)

Phillips v. Hudson (R., July 10)

Fielden, Bart., v. Mayor, &c. of Blackburn (W., July 14)

Att.-Gen. v. Staffordshire Copper Extract Co. (Limited) (W., July 16)

Simmons v. British National Life Assurance Association (S., July 23)

Grady v. Taylor (R., July 23)

Thornton v. Howe (R., July 24)

Tilley v. Thomas (S., July 24)

Att.-Gen. v. Mid Kent Railway Co. (S., July 25)

Pilgrim v. Auction Mart Co. (Limited) (W., July 26)

Byre v. Stilt (Vice-Chancellor of County Palatine of Lancaster) (July 27)

Osborn v. Duke of Marlborough (S., July 28)

Hynam v. Dunn (W., Aug. 4)

Austin v. Tawney (R., Aug. 9)

Thurston v. Gausson (R., Aug. 9)

Snowball v. Wrightson (W., Oct. 5)

CAUSES, &c.

Stevens v. Harvey (M D, Pt. heard)

Cox v. Horsley (D)

Cox v. Horsley (D)

Ricketts v. Long (M D)

Cross v. Raven (F C)

Cooper v. Jarman (F C, Summons to vary Certificate)

England v. Lavers (F C)

Branker v. Carne (M D)

Carne v. Branker (M D)

Ormerod v. Roston (F C)

Verelst v. Midland Railway Co. (M D)

Wood v. Joynson (M D)

Kernochan v. Ryland (M D)

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

Jarvis v. Allen (M D)
 Chadwick v. Young (M D)
 Turquand v. Miller (M D)
 Miniken v. Mackinlay (M D)
 Penaluna v. Edwards (M D)
 Libri v. Sotheby (M D)
 Grisell v. Money (Cause, Witnesses)
 Bwyne v. Ross (M D)
 Jones v. Badley (Cause, Witnesses)
 Kidd v. Tomlinson (M D)
 Tomlinson v. Gregg (M D)
 Champion v. Coghlan (F C)
 Shaw v. Beazley (Cause, Witnesses)
 Lefevre v. Huskisson (M D)
 Simons v. Bagnall (M D)
 Hodgson v. Hodgson (Cause)
 Wilding v. Lander (M D)
 Coemper v. Lawrie (M D)
 Upchurch v. Ekins (M D)
 Parker v. Butcher (M D)
 Lefroy v. Scott, Bart. (M D)
 King v. East & West Junction Railway Co. (M D)
 Walshe v. Domett (Cause, Witnesses)
 Barnard v. Sayers (Cause, Witnesses)
 Hamilton v. Spottiswoode (Cause)
 Coffin v. Searby (Cause)
 Ferguson v. Watts (M D)
 Visconti v. Bowen (M D)
 Davis v. Davis (M D)
 Dummett v. Symes (M D)
 Neame v. Moorsom (M D)
 Webster, Bart., v. Cook (Cause)
 Kirk v. Faulkner (M D)
 Oldham v. Oldham (M D)
 Gellatly v. Smith (M D)
 Philby v. Philby (Cause)
 In re Crews } (F C, from
 Sewell v. Crews } Chambers)
 Read
 Howse v. Lawrie (M D)
 Dell v. Cocke (M D)
 Allen v. Jarvis (M D)
 In re Hodge's } (F C, Sum-
 Estate } mons to vary
 Hodge v. Cross } Certificate)
 Righton v. Righton (F C)
 Lawrence v. Bell (F C)
 Peterson v. Peterson (F C, Ptn)
 Jackson v. Henderson (F C)
 Buswell v. Linnell (M D)
 Barillon v. Carr (F C)
 Blogg v. Johnson (F C)
 Carlyon v. Truscott (F C)
 Phillips v. Mayor (F C)
 Crawley v. Carter (M D)
 Croskill v. Faithwaite (Cause)
 Markwick v. Over (F C)
 Hodges v. Grant } (F C)
 Hodges v. Deck }

Stewart v. Hay } (F C, Sum-
 Mackintosh v. } mons to vary
 Stuart } Certificate)
 Franklin v. Hall (F C)
 Winter v. Wallis (F C)
 Robinson v. Boycott (M D)
 Clarke v. Sunderland (M D)
 Heane v. Evans (M D)
 In re Hayalet } (F C, from
 Royer v. Marshall } Chamb.
 In re Robinson's Es- } (F C,
 tate } from
 Compton v. Portal } Ch.
 Canadian Loan and Invest-
 ment Co. (Limited) v.
 Kemp (M D)
 Harris v. Nunn (F C, Sum-
 mons to vary Certificate)
 Dickinson v. London, Chat-
 ham, and Dover Railway
 Co. (M D)
 Overman v. Overman (F C)
 Leigh v. Birch (F C, Sum-
 mons to vary Certificate)
 Gosling v. Gosling (F C)
 Fryer v. Ward (F C, Sum-
 mons to vary Certificate)
 Kerby v. Hampson (M D)
 Morris v. Kenrick (M D)
 Evans v. Jones (F C)
 West v. Rowberry (M D)
 Hodgson v. Churchman (M D)
 Morison v. Great Eastern
 Railway Co. (M D)
 Goodfellow v. Thirlwall (M
 D)
 Read v. Read (M D)
 London and South-western
 Bank (Limited) v. Maples
 (M D)
 Hodder v. Gilbert (M D)
 Wilkinson v. Wilkinson (F C)
 Lea v. Grime (F C)
 Robins v. Edwards (M D)
 Davenport v. Barlow (F C)
 Haines v. Haines (M D)
 Edmonds v. Millett (F C)
 Clutton v. Clutton (M D)
 Warde v. Kane (F C, Sum-
 mons to vary Certificate)
 Bolitho v. Hillyar (F C)
 Whyte v. Preston (F C)
 Hutchinson v. Dickson (M D)
 Tottenham v. Maitland (M D)
 Turner v. Jones (M D)
 Dell v. Griffiths (Cause)
 Jackson v. Hodges (M D)
 Snowley v. Great Eastern
 Railway Co. (M D)
 Howard v. Hunt (M D)
 Halford v. Brooks (M D)
 Morten v. Great Eastern Rail-
 way Co. (M D)
 Eastlake v. Eastlake (F C)
 Henry v. Macdonald (M D)
 Poppleton v. Walker (M D)
 Wilby v. Gartaide (M D).

Rothery v. Nelson (Cause)
 Trickett v. Russell (M D)
 Upton v. Mavor (M D)
 Mackenna v. Parkes (Cause)
 Johnston v. Brunsell (Cause)
 Fox v. Dellestable (M D)
 Thomas v. Cresswell (M D)
 Ormandy v. Okell (M D)
 Pigon v. Estate Co. (Limited)
 (M D)
 Loveridge v. Bates (M D)
 Yeatman v. Read (M D)
 Hilton v. Hilton (M D)
 Dolwin v. Ellis (M D)
 Villars v. Tink (M D)
 Crawford v. Higgs (M D)
 White v. Birch (M D)
 Hancock v. Bataman (M D)
 Baring v. Harris (Cause)
 Wason v. Metropolitan Dis-
 trict Railway Co. (M D)
 Corrock v. Grant (M D)
 Fox v. Jones (M D)
 Collyer v. Collyer (Sp C)
 Pearce v. Snaipage (M D)
 Curling v. Walters (M D)
 Slattery v. Axton (Case on Ap.
 from Brompton County Ct.)
 Governor, &c. of the Poor of
 Bristol v. Pearce (Sp C)
 Harrison v. Lewis (Cause)
 Smith v. James (M D)

Simon v. Edwards (M D)
 International Bank (Limited)
 v. Gladstone (M D)
 Fiddee v. Stanway (Cause)
 Grieve v. Grieve (Sp C)
 Brayne v. Rees (M D)
 Reeves v. Gladding (M D)
 Pudsey Union Waterloo Mill
 Co. v. Merritt (M D)
 Lewin v. Lewin (M D)
 Begbie v. Fenwick (Cause)
 In re Clements } (F C,
 Clarke v. Clemmans } from C)
 Scott v. Heritage (Cause)
 Att.-Gen. v. Earl of Lonsdale
 (Cause)
 Saunderson v. Fowler (Sp C)
 Beecher v. Major (F C)
 Millard v. Ellyett (F C)
 Att.-Gen. v. Lawson (M D)
 Mayor, &c. of Hythe v. East
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THE JURIST.

LONDON, NOVEMBER 10, 1866.

SOME weeks ago (*ante*, p. 375) we drew our readers' attention to the recent case of *Fletcher v. Rylands* (12 Jur., N. S., part 1, p. 603; 1 Law Rep., Ex., 265). The decision is one of such great importance, that to discuss at all adequately its remaining aspects would take far more space than is now at our disposal; but we wish at present to found some further remarks upon the passage in which the Court disposed of the cases of "inevitable accident," cited in support of the defendant's contention. It will be as well here to quote the whole passage relating to this point (which occurs at p. 286):—"Traffic on the highways, whether by sea or land, cannot be conducted without exposing those whose persons or property are near it to some inevitable risk; and that being so, those who go upon the highway, or have their property adjacent to it, may well be held to do so subject to their taking upon themselves the risk of injury from that inevitable danger; and persons who by the license of the owner pass near to warehouses where goods are being raised or lowered, certainly do so subject to the inevitable risk of accident. In neither case, therefore, can they recover without proof of want of care or skill occasioning the accident; and it is believed that all the cases in which inevitable accident has been held an excuse for what *prima facie* was a trespass, can be explained on the same principle, viz. that the circumstances were such as to shew that the plaintiff had taken that risk upon himself."

What, then, is the principle involved in this rule, and contained in the expression of "taking a risk upon oneself?" The words appear to point to a quasi-contract; and any deviation in particular instances from a general rule is so apt to be described in that form, that one naturally tends to give that meaning to the words. Where a modification of an existing rule is being introduced, no form of words so well conceals the fact that an alteration in the law, or, if the phrase be preferred, the development of a concealed limitation, is being made. Where even a rule of settled law is being expounded, it will often give to the rule a look of systematic coherence, and to the spectator a feeling that it is grounded in reason, to say that the person against whom it presses has contracted to be placed in that position. Nor is the phrase without meaning, but its fault is in expressing too much. The most prominent characteristic of a contract, indeed, is consent; and of the liability consequent on a contract, that it is incurred voluntarily by the person subject to it. That this statement is not enough to satisfy the legal definition of a contract need scarcely be said, but the statement shews what is that circumstance in occurrences to which the phrase is applied, which constitutes their analogy to contracts. It is that the party has voluntarily put himself in a position where, without practical injustice to another person, he cannot, on the one hand, assert, as against him, his ordinary legal rights; or,

on the other hand, cannot fail to incur as towards him a more than usual liability; where, in other words, it is required by ordinary fairness and convenience, that (as the case may be) his own legal power of action should be curtailed, or a duty to act imposed, or that the legal power of action of the other should be enlarged, or his duty to act abridged. This may be all that is meant by the expressions of the Court; and since the notion of any contract between the supposed plaintiff and defendant would ill fit with the circumstances mentioned, it is no more desirable than it is necessary to assume that such a view is sanctioned by them.

The principle involved then appears to be, that a person receiving an injury on the highway, or under other similar circumstances, by the act, but not by the negligence, of another person using the highway, is disentitled from complaining of it, because the use of the highway is necessarily accompanied by risk. Now, the mere fact that the use of the highway is necessarily accompanied by the risk of suffering an accident appears to be no reason in itself why the person suffering it should not have compensation for his injury; what is wanted is some principle to exonerate the innocent actor from liability, and this may be found in the fact, that the use of the highway in its ordinary and regular manner is accompanied by the danger, not only of suffering an injury oneself, but also of doing an injury to others, and as a consequence (if the law were so) of having to make compensation for the same. If, then, that use of this common benefit which is lawful and proper, were, by the existence of such a legal liability, subjected to consequences that made it hazardous and burthensome to a degree inconsistent with common convenience; and if, upon the other hand, the probable contingency of accidents caused by the acts of others, is one that must be known to all persons using it, it may be properly said of the person suffering from such an accident that he has voluntarily placed himself in a position where it would be a practical injustice to others to hold them liable for the consequences of any injury which they might innocently cause. This rule is well illustrated by the case of *Goodwin v. Cheveley* (28 L. J., Ex., 298). It was an action brought by the owner of cattle, which, being driven along the public road, strayed into an adjoining field through a defective fence. The drover might have fetched them out at once, but, having many cattle in his charge, he took on the rest to a place of safety, and then returned for the strays; the owner of the field, however, had already distrained them. The plaintiff brought his action against the landowner, and, being nonsuited at the trial, moved the Court to set aside the nonsuit. There was no difference of opinion, on the one hand, as to the duty of the plaintiff's drover to remove the cattle within a reasonable time; nor, on the other hand, as to the absence of right in the defendant to distrain them until a reasonable time had elapsed, though the Court was divided in opinion as to whether the question of reasonable time was for the judge or the jury. Martin, B. (one of the majority which held the latter opinion), in the course of his judgment, noticed the argument

that the defendant was under no obligation to any one to fence his land, and replied to it, "It is said that the defendant in this case is not to blame. I do not say he is to blame. I am not aware that he could be indicted for not fencing his field from the road, though most people in this country put fences between their fields and the road. If, however, a man will not do that, it seems to me he must put up with some of the inconveniences consequent upon it. Now, one of the inconveniences is, that cattle being driven along the road will stray."

The same reasoning might probably be applied in various other circumstances; for instance, although the chipping of stone upon the highway is conducted in so reckless a manner, that it seems dangerous to say anything in favour of the practice, yet if that, or any other matter properly performed upon the highway for the purpose of its repair, were to cause an injury to a passenger, the same reason would, apart from any argument founded on public duty, appear to apply in exoneration of the author of the accident. The same principle appears equally applicable to the case of accidents happening upon a road, not public, but used by several in common, and which are caused without negligence, by those rightfully using it, to others exercising the same right. So also, where several persons engage in a common undertaking involving danger, and this particular danger of injury from one another, there, although the principle of contract might seem more applicable than in the cases already mentioned, yet without resorting to that principle, the same reason would suffice to discharge from liability the author of an accident free from negligence. Similar considerations enter into the rules of law relating to master and servant, but the peculiarities of that case demand that it should be separately treated. It may probably be said in general, that wherever there is a common use of the same object of property, or a common action of a lawful kind, there, in respect of accidents happening in the course of that common use or action, this limitation is annexed to the rule which guarantees to every man, in respect of his person and property, immunity from damage by others.

This limitation must, however, be carefully distinguished from two other limitations of that rule, which occupy a very different relation to the rule itself. The first is that relating to the amount of the injury, and is expressed in the maxim, "De minimis non curat lex;" the second is that relating to the remoteness of the injury, and is expressed in the maxim, "Non remota causa, sed proxima spectatur." With the latter we do not at present deal. With respect to the former, we will make the following brief remarks. The exception noticed hitherto has been an exception introduced in favour of those who use a common object of use, or perform a joint action, in a reasonable and ordinary way. This is a limitation applicable to certain particular classes of circumstances, and requiring for its application that the party whose right is limited by it should have voluntarily put himself in circumstances of danger. And so applied, it is obvious that the rule is subject to a useful check, for it becomes necessary to shew that the plaintiff has, in fact, done so. But there is no

such rule applicable generally to injuries or nuisances, as that if they are done in a reasonable and proper way, or in a convenient place, they may be done without legal liability, if done without negligence. For the rule limiting the natural freedom of action does not do so with reference to the action limited, but to its consequences on others. The restraint is imposed in order that the enjoyment of others may not be disturbed, and this rule, expressed in the maxim, "Sic utere tuo ut alienum non lœdas," fixes the limitation at the point where the restrained action begins to infringe upon the enjoyment of others. Therefore the question is not, has the defendant acted in a reasonable and convenient manner, but, has the plaintiff been damaged by his action. If so, he has his right of action, and that only can be reckoned reasonable and convenient action on the part of the defendant, which does not interfere with the plaintiff's enjoyment. This is the doctrine laid down in *Bamford v. Turnley* (31 L. J., Q. B., 286), and affirmed in the House of Lords in *Tipping v. St. Helen's Smelting Company* (13 W. R. 1083); and the question is, what is the limitation of this rule? In the former case cited, Bramwell, B., who concurred in the judgment of the Court, but delivered his opinion separately, in the course of his judgment, said, "The defendant has infringed the maxim 'Sic uteri tuo ut alienum non lœdas.' Then what principle or rule of law can he rely on to defend himself? It is clear to my mind that there is some exception to the general application of the maxim mentioned. The instances put during the argument of burning weeds, emptying cesspools, making noises during repairs, and other instances which would be nuisances if done wantonly or maliciously, nevertheless may be lawfully done. . . . Nor can it be said, that the jury settle such questions by finding there is no nuisance, though there is; for that is to suppose they violate their duty, and that, if they discharged their duty, such matters would be actionable, which I think they would not and ought not to be. There must be then some principle on which such cases must be excepted. It seems to me that principle may be deduced from the character of these cases, and is this, viz. that those acts, necessary for the common and ordinary use and occupation of land and houses, may be done, if conveniently done, without subjecting those who do them to an action. This principle would comprehend all the cases I have mentioned, but would not comprehend the present, where what has been done was not the using of land in a common and ordinary way, but in an exceptional manner; not unnatural nor unusual, but not the common and ordinary use of land."

Now, this mode of stating the rule certainly differs from the statement of law made by the rest of the Court. It differs from it, not only in dealing with an exception to the rule, which, as not thus calling for decision, they did not think it necessary to pronounce upon, but which the learned baron felt to be so important a point as to make the statement of the rule without it imperfect; but it also appears to differ by, in substance, contradicting the rule. For

although this consequence is attempted to be avoided, by limiting the right of nuisance to the "common and ordinary use of land," yet the vagueness of the limitation is such as to make it practically useless. How can the Court decide what is a common and ordinary use of land? Such uses are too various to be classified or enumerated on any satisfactory basis, or to have the quantity of nuisance which may be reasonably caused under each head ascertained in the form of a legal rule. But, on the other hand, if they are left to the decision of the jury, all the uncertainty which it was desired to exclude, is reintroduced. But whether this could, or could not, be satisfactorily done both with respect to the kind, and to the degree of nuisance, it is submitted that a wrong test is resorted to.

In a previous article (ante, p. 361) we endeavoured to point out the unsatisfactory nature of such an inquiry with respect to water rights, and to indicate what appeared to us to be the only true limitation on the riparian owner's right of use, viz. the point where his use became materially injurious to his neighbour. It appears to us that our remarks there are equally applicable here; and further, that as this consequential injury is what limits the right of use of property, so the phrase itself shews the measure of the liability consequent on such use. That excess of his rights in using his own property for which a man is liable, is not every excess; it is not every act whose operation passes beyond the limits of his own property, and affects another, that is a cause of action, but only such acts as produce a material injury. What, then, is a material injury? That which the jury finds to be such. It is, it seems to us, impossible to avoid the ultimate recourse to a question of fact, to be decided by that tribunal. But this verdict, under the supervision and control of the Court, is, we think, a decision that may be trusted. It may, no doubt, be objected, that this is true of nuisances, but is not true of trespasses; that in trespasses, the magnitude of the injury is quite immaterial. The boundary between trespasses and nuisances, which was never exact, is daily becoming more and more obscure, is in fact unsound, and must in time vanish. But as to any supposed injurious consequences arising from the application of the principle stated above to what are now classed as trespasses, the apprehension appears to be unfounded. It is to be noticed, that acts are injurious, not only because of the immediate pain or loss caused by them, but because of consequences detrimental to the plaintiff which may ensue. Now, if it is considered that, in the first place, all such injuries are excluded from this exemption which are the result of malice or negligence; that, in the second place, all wilful invasion of another's property, that is, invasion not done with the view of injury, but deliberately done with a disregard or an ignorance of right, is properly characterised as negligent; and that, in the third place, no act can be deemed immaterial that tends to establish a prescriptive right against another; it will be seen that no one would suffer, nor any legal security be endangered, by the universal recognition and application of the rule above stated, while it would certainly agree well with the general frame of legal rules and the fundamental principles of law.

ERRATA.—In the eighth line of the second paragraph of the leading article in our last number, the word "ancient" should be at the end of the line.

At the end of the third paragraph of the same article, for "law equity," read "law and equity."

Correspondence.

SMITH v. THACKERAH.

TO THE EDITOR OF "THE JURIST."

SIR,—Having read with some curiosity and interest both the case of *Smith v. Thackerah* and your able article upon it (see ante, p. 411), I ask the favour of being allowed to make one or two comments upon both. In the first place, Sir, I quite agree with you in thinking that the right question was not put to the jury, but it appears to me nevertheless that the right question was involved in the question which was put. In accordance with the cases referred to in your article, it seems clear that the true question would have been, was the subsidence of the land in any degree caused or increased by the presence of the building? If it was so caused, then the accident was not due to the natural weight of the plaintiff's land, the support to which alone the defendant was bound not to withdraw; and being due to the added weight of the building, without which it would not have happened, the plaintiff was not entitled to recover. If, however, it was not so caused, but would have taken place if the land had remained in its natural condition, then it is, indeed, inscrutable how it could be at all material to inquire whether, if the land had so remained, the plaintiff would have suffered material or "appreciable" damage. It may, and frequently does, happen, that when a given excavation is made, the adjoining land would, in its natural state, sink to a given point of subsidence, and there rest; and further, that the presence of buildings upon it would not cause any appreciably greater subsidence. But the land in its natural state would perhaps have been uninjured, in this sense, that the owner could have had as much profit out of it after subsidence as before, whereas in its altered state the owner suffers heavy loss. But what is this natural state of the land by reference to which injury is to be appreciated? Suppose it has been converted from barren moor to tillage, and that in its altered state it is more liable to injury. Suppose that a fence of no considerable weight, but of important use, has been erected upon it, in which a gap is broken. Suppose even weight has been removed from it, and, for the purposes of use or ornament, a terrace bank has been cut out, which the subsidence shakes down. Is it to be pretended that this unlimited inquiry about the natural state of the land is to be gone into, and that the owner is to be entitled to no redress unless he can shew that if the land had been in its natural state of barren moor he would have suffered some appreciable injury by the subsidence; and, as a logical consequence, is he then to be entitled to no redress beyond what he would in that case have suffered? This last proposition is too opposed to clear law and to common sense to be entertained for a moment, but it follows inevitably from the statement of law involved in the judgment of Mr. Justice Smith. And, in passing, it is impossible to abstain from remarking, that on the occasion when this case was decided, the Court was without the clear and subtle intellect of Mr. Justice Willes.

It is, then, too clear for argument, that the question, whether the plaintiff would have suffered injury by the subsidence if the land had remained in its natural state, or, "if there had been no building on it," is as immaterial as the question, whether the plaintiff would have suffered injury if he had not been owner of the land. The question is not, whether the same subsidence would have caused injury, but whether the same subsidence would have occurred. If it would, then the owner, who is entitled to use his land as he pleases, is

entitled to redress for the consequent injury. (*Stroyan v. Knowles*). If it would not, then the owner, who has, either by imposing additional weight upon his land, or by withdrawing its self-supporting power, caused or aggravated the subsidence, has no right to complain; he suffers from his own act.

But, agreeing thus far with your observations, and concurring in the view that that portion of the question put to the jury, which I have hitherto noticed, was immaterial and irrelevant, it yet seems to me that the first part of the answer of the jury probably embraced a finding substantially in favour of the defendant. For that answer seems to imply that, although the land would have sunk to some degree if not built upon, yet the amount of *subsidence* would in that case have been trifling and inconsiderable, but was, in fact, aggravated by the presence of the house. Now, the most strictly logical way of stating the matter would, I submit, be this. For so much damage as would have happened to the land and buildings, if no further subsidence had taken place than would have taken place with the land in its natural condition, the plaintiff should have redress. For so much injury as has happened in consequence of his adding weight, or taking away self-supporting power, he is remediless, being himself the author of his own wrong. But it is impossible to divide events so finely, or to go into such remote and elaborate calculations and inquiries. The matter must be taken as a whole. Practically, therefore, the question comes back to this—has any act of the plaintiff's caused or contributed to the *subsidence*? If it has, he fails; if not, he succeeds.

But now the question arises, is every disturbance of adjoining land by the abstraction of support an actionable wrong, though it be but the disturbance of "a few grains of sand," or is that only a cause of action which produces a material disturbance? And here it appears to me that the writer of the article in question falls into an error. Without discussing the question, whether the right to support ought or ought not to be classed with easements, it is at least more analogous to the right in a natural stream (which is itself also denied the name of easement, and termed "a right of property"), than with the right to the exclusive possession of land, which stands related to trespass. Now, comparing these two rights, the case of *Embrey v. Owen* (6 Exch. 370) shews that, as to the latter, there is no cause of action, unless the stream has been *materially* altered or diminished, although the defendant has exceeded his rightful use, by applying the water to unusual purposes. It is not a question whether the plaintiff has been materially injured, as is shewn by *Sampson v. Hoddinott* (1 C. B., N. S., 590), but whether the stream has been materially altered; if it has been, the plaintiff has his action. Applying this statement of law to the analogous case of support, it may probably be laid down that, not every disturbance of the soil is a cause of action, but only such a disturbance as is material; a question the answer to which cannot possibly be fixed in definite limits, but one practically not difficult for a jury to dispose of. This, I submit, is the proposition which the Court of Common Pleas affirms in *Smith v. Thackerah*.

In conclusion, allow me to demur to the statement with which your article opens, that the right to support is now settled to be a right of property, and not an easement. I believe that, although this has been laid down in high quarters, with great authority, it has not yet been so decided; and I will further venture to express my own private opinion, that the law on this subject, and on the subjects of watercourses and light, will never be clearly settled until the quality of those rights as easements is recognised, and some

steps retraced in the path which the Courts have of late years followed; and, in support of this view, I ask leave to refer to an article at p. 303 of the *Law Magazine* for February in this year.

I am, Sir, your obedient servant,
Temple, Nov. 1, 1866. S. J. L. E.

MERGER IN EQUITY.

WHEN the owner of a long leasehold interest purchases the reversion in fee, he either extinguishes the term at law by taking a conveyance to himself, or attempts to preserve it as a protection against any defect in the title, by taking the conveyance of the fee to a trustee for himself. In either case he became in equity the owner of the fee in possession, and the term, if it subsists, is a mere legal excrescence. A different view, however, of the state of the title under such circumstances was taken in the case of *Delaney v. Delaney* (12 Jur., N. S., part 1, p. 445; 2 Law Rep., Eq., 210). In that case A. B. had purchased in 1864 a leasehold property for the residue of a term of ninety-nine years. In 1865 he purchased the reversion in fee, and by a deed to which he was a party, stating his desire that the term should not merge, the reversion was conveyed to a trustee in trust for A. B., his heirs and assigns. Subsequently to that conveyance the testator made his will, and bequeathed to his wife all his personal property, estate, and effects. The Master of the Rolls held, that under this bequest (which was considered not to extend to real estate), the widow took the lands for the residue of the term for her own benefit. His Lordship said, "The equitable doctrine that the term must go with the inheritance is another thing. If the testator had devised the land to another, it may be that the devisee would be entitled to claim it, or if he had died intestate, and the question had arisen between the next of kin and heir-at-law, it may be that the term would have gone to the heir. But when he shews his intention to keep the term alive by the form of the grant, and then gives all his personal estate to the plaintiff, the term passes to her under the will." As the will did not in any way refer to the term, it could not pass it unless the beneficial interest in the term continued, after the purchase of the reversion, to subsist *for all purposes* as a personal property distinct from the inheritance, and transmissible as such. If it would not in case of intestacy devolve as a personal asset, it could not pass beneficially under a will. The only question was, whether the testator had on the purchase of the reversion expressed or shewn an intention to preserve as a separate chattel the beneficial interest which he previously had in the term. It is not easy to conceive a motive for such an intention, though, doubtless, equity would give effect to it if it were clearly manifested; for though it is conceived that the owner of a legal or equitable fee could not by a mere declaration in a deed carve out of that fee, as a separate property in himself, a legal or equitable term, which would devolve upon his executors or administrators as personal estate;—though such a declaration of intention would fail as being an attempt to alter the legal incidents of property—yet there does not seem to be any invalidity in a declaration by the equitable owner of an estate in which there is a legal term outstanding, that the legal title shall carry a commensurate beneficial interest distinct from the inheritance. But it seems to be clear that so extraordinary an intention cannot be inferred from the mere fact that the purchaser of the reversion takes measures for keeping the term on foot at law. The statement of the purchaser's desire that the term

should not merge afforded no indication of intention as to the beneficial interest, because that desire is equally apparent from the transaction itself in every case where the term or the reversion is vested in a trustee; and the doctrine of the Master of the Rolls, to be consistent, must extend to every case in which a legal term is kept on foot.

The converse case of a purchase of a leasehold term by the reversioner occurred in *Gunter v. Gunter* (23 Beav. 571). There the owner of the fee having granted a lease of a house for a term of seventy-seven years, took a mortgage of the lease to a trustee, and subsequently purchased the equity of redemption, which, by his direction, was assigned to the trustee in trust for the lessor, *his executors, administrators, and assigns*. It was held by the Master of the Rolls that the trust of the term subsisted as a distinct property, and passed under a bequest of the lessor's residuary personal property.

It is submitted that these decisions are inconsistent with the equitable doctrine as to merger, which is, that equitable interests merge under the same circumstances which would occasion merger if they were legal estates, unless it is for the interest of the beneficiary that they should not merge, or he has clearly shewn an intention to keep them distinct. But no inference against merger is to be drawn from the dealings with the legal estate.

DEATH OF THE RIGHT HON. SIR JAMES LEWIS KNIGHT BRUCE.

THE Right Hon. Sir James Lewis Knight Bruce, D.C.L., F.R.S., and F.S.A., the late Lord Justice of the Court of Appeal, died at Roehampton Priory, Surrey, on Wednesday afternoon, at half-past three o'clock. He was born at Barnstaple, Devon, in 1791. His father, John Knight, Esq., of Llanblethian, Glamorganshire, and of Farlinch, Devon, was a country gentleman, who had married Margaret, daughter of William Bruce, Esq., formerly a surgeon in the royal navy, and afterwards a banker in London, and high sheriff of Glamorganshire, to which county he had retired before his death, and purchased a considerable estate. Mr. Bruce's father, a captain in the royal navy, who died in command of H. M. ship *Bedford*, off Cape St. Vincent, was a cadet of the old and distinguished baronial family of Bruce of Clackmannan. One of his progenitors had been Lord Chief Justice of England in 1266; two had been judges of the King's Bench in the thirteenth century; and another, after having attained judicial rank in Scotland, and been ambassador from James VI to Queen Elizabeth, was, on the accession of his sovereign to the English throne, created Baron Bruce, of Kinloss, and Master of the Rolls in England, in consideration of the eminent services he had rendered by securing the peaceable succession of the Scotch king on the death of Elizabeth. In September, 1837, the late Lord Justice, then Mr. Knight, applied for and obtained the Queen's royal license and permission that he and his issue might, from motives of affectionate regard for the family of his late mother, take and use the surname of Bruce in addition to and after that of Knight. Long before that time (in 1812) he was entered as a student at Lincoln's-inn, and he was called to the bar in 1817. After attending the Welsh Circuit for some time, he joined the Chancery bar, and soon became a leading member of the profession. As an orator he would probably never have succeeded; but he selected the Chancery bar, where eloquence was little needed, but where a coherent and clear statement of the circumstances of each case is

essential. In 1829 he was appointed a king's counsel, and in 1831 was returned to Parliament as member for Bishop's Castle, a borough which was shortly afterwards disfranchised by the passing of the Reform Bill. In Parliament he was a supporter of the Conservative Government, and as such, in conjunction with the Hon. J. Manners Sutton, he contested Cambridge in the general election in August, 1837, when the Liberals were victorious by a small majority. The length of time which has elapsed since he was in practice at the bar has much effaced the memory of what he was as an advocate; but those who remember him as one of the leading counsel in the Court of Vice-Chancellor Shadwell, in the times when the late Mr. Jacob and Mr. Sugden (now Lord St. Leonards) were also in practice there, speak of him as second to none, either of that day or since, in brilliancy, force, or learning. He had both great quickness and great acuteness of intellect, and his faculty for business was unrivalled. But what he was chiefly remarkable for was his singular gift of language, combining a rare felicity and terseness of expression, with a wonderful fluency and abundance, yet never wandering from the point.

When Parliament decided, in 1841, that two additional judges were necessary for the assistance of the Lord Chancellor, Mr. Knight Bruce was selected for the important office of Vice-Chancellor, and the appointment gave general satisfaction to the whole profession. He thereupon received the honour of knighthood, and was shortly after sworn a member of the Privy Council.

No amount of labour seemed to distress him. Shortly before the Long Vacation of 1850, at the most pressing period of the year, the illness of the other Chancery judges obliged him to undertake the whole business of the three courts. He dispatched the business with so much discrimination, ability, and good temper, that a public expression of respectful admiration was elicited from the whole bar, in an address from the Attorney-General.

When the Court of Appeal in Chancery was organised in October, 1851, Sir James Knight Bruce was selected for the senior Lord Justice, Lord Cranworth being the junior.

His Lordship married, in 1812, Eliza, daughter of Thomas Newton, Esq., of Duvale, Devon, and by her, who died last August, he had issue—Horace Knight Bruce, M.A., Vicar of Abbotsham, Devon, deceased; Lewis Knight Bruce, M.A., Balliol College, Oxford; George Hamilton Wyndham Knight Bruce, Cornet 3rd Light Dragoons, killed at Moodke; and two daughters, Eliza Julia, who married Francis Samuel Daniel Tyssen, Esq., late 4th Dragoon Guards; and Rosalind Margaret, who married John George Phillimore, Esq., M.P., Q.C., now deceased. His Lordship was a bencher of Lincoln's-inn, F.R.S., F.S.A., and D.C.L. His nephew, the Right Hon. Henry Austin Bruce, M.P., the son of the Lord Justice's elder brother, was formerly Under-Secretary of State and Vice-President of the Council.—*Daily Telegraph*.

BOOK RECEIVED.

The Law Magazine for November, 1866, containing Articles on—1. Proposed alterations in the law of master and servant. 2. The rank of Queen's lieutenant. 3. Gordon's case. 4. Domestic service. 5. Public health. 6. Judicial statistics (by S. C. Greaves, Q.C.) 7. Bribery and corruption at elections. 8. Recent legal appointments. 9. On a project for an international code (by D. D. Field). 10. Extract from a letter by Lord Brougham to the Earl of Radnor. 11. Notices of new books.

CAUSES ENTERED AFTER THE FOURTH DAY OF MICHAELMAS TERM.

COURT OF QUEEN'S BENCH.

CROWN PAPER.

Devonshire Jeffreys v. Major.
Lincolnshire Corporation of the City of Lincoln v. Overseers of Holme Common.
Coventry Robins v. Wrench.
Hertfordshire Fenson v. Dollemore.

COURT OF COMMON PLEAS.

NEW TRIALS.

London.—Barker v. M'Andrew
Exeter.—Harvey v. Lawrence
Monmouth.—Morgan v. Nicholl
Guildf.—Scott v. Lord Ebury
Surr.—Rovedino v. Hughson
Chester.—Smith v. Littledale
London.—Thompson v. Claveing
—Lay v. French
Surr.—Yander v. Richardson
Suspended.
Essex.—Grant v. East London
Water Works.

SPECIAL ARGUMENTS.

Monday, Nov. 12.
Pickering v. Handley (D.)
Gerard v. Lewis (D.)
Azemar v. Casellas (Case at Nisi Prius)
Nicholson v. Reynolds (D.)
Bradley v. Cartwright (Case by order)
Ball v. Schofield (Case at Nisi Prius)
Friday, Nov. 16.
Williams v. Cadbury (Case by order)
Devonshire v. Christie (D.)
Clarke v. Cosens (D.)
Hawkins v. Hall (D.)
Shropshire Union Railway & Canal Co. v. North Staffordshire Railway Co. (Case by order)
Straus v. St. John (D.)
Monday, Nov. 19.
Gronhand v. Egerton (D.)
Gantreh v. Same (D.)
Jones v. Same (D.)

APPEALS FROM REVISING BARRISTERS.

To be heard, Saturday, Nov. 17, and Tuesday, Nov. 20.

Barlow, Ap., Mumford, Resp.
Proudfoot, Ap., Barnes, Resp.
Dodson, Ap., Overseers of Chatham
Cotton, Ap., Pratt, Resp.
Same, Ap., Same, Resp.
Mills, Ap., Cobb, Resp.
Bright, Ap., Devenish, Resp.
Barlow, Ap., Glasscock, Resp.
Thackeray, Ap., Pilcher, Resp.
Hinde, Ap., Chorlton, Resp.

COURT OF EXCHEQUER.

SPECIAL PAPER.

Huffer v. Allen (D.)
Life Association of England (Limited) v. Gordon (D.)
Ensor v. Davies (D.)
Weale v. Brown (Ap.)
James v. Brewer } (Sp. C. by order)
Sams v. Tucker }
Thompson v. Knight (D.)
Zuccani v. Calvert (Sp. C. by order of Nisi Prius)
Evans v. Patrick (D.)
Lewis v. M'Kee (D.)
Boughey v. Rowbottom (Ap.)
Leverson v. Mare (D.)

EXCHEQUER CHAMBER.

ERRORS AND APPEALS.

Ellison v. Jors (E.)
Taylor v. Chichester and Midhurst Railway Co. (E.)
Wilson v. Jones (Ap.)
Noble v. Ward (Ap.)

SITTINGS IN ERROR.

Days appointed for Errors and Appeals after Michaelmas Term, 1866.

QUEEN'S BENCH.

Tuesday Nov. 27 | Wednesday Nov. 28

COMMON PLEAS.

Thursday Nov. 29 | Friday Nov. 30

EXCHEQUER.

Saturday Dec. 1 | Monday Dec. 3

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THE JURIST.

LONDON, NOVEMBER 17, 1866.

THE recurrence of the annual period for the revision of the list of parliamentary voters having drawn attention to some points of law on the qualification of electors, we have been surprised to find that doubts are still from time to time expressed as to the meaning and effect of the decision of the Court of Common Pleas in the case of *Robinson v. Dunkley* (1 H. & P. 1). The question in that appeal was as to the right of a mortgagor to have his name retained on the list of voters in respect of building land which was charged with monthly payments, for the repayment, within a fixed period, of the money borrowed, and interest thereon—the annual amount of such monthly payments exceeding the annual value of the property. And the Court held, that, notwithstanding the fact of that excess, the mortgagor was entitled to have his name on the register. The stat. 8 Hen. 6, c. 7, limits the right of voting to people having land “to the value of 40s. by the year, at the least, above all charges,” and also enacts, that “such as have the greatest number of them that may expend 40s. by year and above, as afore is said, shall be returned . . . knights for the Parliament.” This was followed by the 18 Geo. 2, c. 18, which, in sect. 5, provides, that no person shall vote without having an estate “of the clear yearly value of 40s. over and above all rents and charges payable out of or in respect of the same.”

Now, the earlier of these statutes, in the words relating to the return to Parliament of the persons chosen, contains a strong indication of the opinion of the framers of the act, that the right of voting was limited to persons having land actually yielding them 40s. a year above all charges. And from that time down to a much later period than the eighteenth year of the reign of George II, there was probably no practical distinction between land of the value of 40s. a year above all charges, and land from the produce of which the owner might *expend* the like sum. But the more complex arrangements of modern times have altered this state of things; now-a-days a man does not wait until he has acquired land before he borrows money on it; he at once borrows the money on the land to enable him to get the land. He becomes a member of a building society; and on pointing out to its managers the plot of ground on which he has set his affection, proceeds to borrow out of the society's funds, on the security of the land, as much as will enable him to pay for it, and to build a house besides. As such societies may be assumed to consist almost entirely of men who are building, or want to build, on similar terms, it is not easy to see how they are “financed;” but the probability is, that the weekly subscriptions required of the members form the cement by which, when their affairs are honestly and prudently conducted, the body is kept from falling to pieces. But at all events, it is clear, that to keep such a society in a state of activity, the repayment of the money lent on mortgage cannot be deferred indefinitely

merely to suit the convenience of borrowers. And accordingly we find that the borrower is bound to a weekly, or monthly, or similar periodical payment of such a sum as will suffice to pay off in the course of a fixed time—commonly ten years—both principal and interest. During the currency of these payments, therefore, the annual charge upon the land will, in the majority of instances, exceed the annual value of the land, and a question immediately arises as to the effect of such a condition of things upon a man's claim to vote in respect of such property. This question came before the Court of Common Pleas in the case of *Copland v. Bartlett* (2 Lutw. 102), where the claimant's land being of the value of 8*l.* a year, was charged with monthly payments of 15*s.*, or 9*l.* a year, during the existence of the society, of which he was a member. There was nothing in the case, as stated by the revising barrister, to shew at what time the monthly payments were to cease, or whether the mortgagor had any or what beneficial interest in the land; but it is to be clearly gathered from the report, that the judges, although they disallowed the claim, did not think that the fact of the annual charge exceeding the annual value would have been conclusive against the claim, if it had been shewn that the claimant had, nevertheless, a beneficial interest in the land of the annual value of 40*s.* above all charges. In a subsequent case, *Lee v. Hutchinson* (Id. 159), where the annual charge on the land equalled its annual value, the judges gave a similar indication. Mr. Justice Maule asking, “How many year's purchase would the estate sell for?” and Chief Justice Jervis, “What is the value of the respondent's interest after payment of the charge?” In the later case of *Beamish v. Stoke* (Id. 189), there was still no finding by the barrister of the value of the claimant's present interest; and the argument was confined to a suggested distinction between the portion of the periodical payments which was applicable to the repayment of the principal, and that which went in discharge of interest—it being contended that the latter portion only was to be reckoned as a charge in reduction of the annual value of the land. The Court, however, as was to be expected, declined to establish such a distinction, and held that the whole of the payment was a charge on the land within the statutes. The last case on the subject is that already mentioned, of *Robinson v. Dunkley*, in which monthly payments to the amount of 2*l.* only remained due on property of the annual value of 3*l.*—71*l.* having been paid off a mortgage for 73*l.* The revising barrister retained the claimant's name on the list of voters, and the decision was upheld in the Court of Appeal. The Reporters, as well as the editor of *Rogers on Elections*, in their notes on this case, express a difficulty in reconciling it with *Beamish v. Stoke*. It seems, however, to us, after perusing the judgments of the Chief Justice and Mr. Justice Williams, that the grounds of the judgment are clear, and not at variance with any principle involved in former cases. In the earlier cases the Courts had no information from which they could draw the conclusion, or even surmise, that the claimant had a beneficial interest of the requisite value; in the last case, it was certain that the claimant had property

worth 71*l.* above all charges; the annual value of which might therefore be fairly estimated as above 40*s.* And this the Court held to be a good qualification, although the claimant had never had, up to the date at which his interest was to be ascertained, anything whatever to expend out of the annual proceeds of the estate above the charges. The test of a qualification, therefore, is, the proportion which the charge bears, not to the annual rental or profits of the land, but to the value of the land itself. If the owner can shew that his interest in his estate, as it stands with all charges on it, is worth in the market a sum which, under ordinary circumstances, would bring him in 40*s.* a year, he is entitled to vote. In the case under consideration, for instance, assuming as we ought, that the transaction was commercially reasonable and fair, can any one doubt that the claimant who had paid off 71*l.* of a sum of 73*l.*, the value of his land, could have found in the market a purchaser willing to give him, say 70*l.*, for his bargain, with all its liabilities; or that the barrister was right in holding that a clear sum of 70*l.* or 71*l.* was of the value of 40*s.* by the year.

WE published last year in "THE JURIST" (part 2, p. 417) a remarkable correspondence between Mr. Baily (one of the Council of Legal Education), Lord Westbury (the chairman), and Mr. Homersham Cox, wherein Mr. Baily was charged with keeping back certain testimonials with which he had been, at his own suggestion, intrusted, to the prejudice of the candidate in whose favour they were given, and we do not find that Mr. Baily has ever denied the charge. So far from doing so, it appears by the sequel to that correspondence, which we now publish, that he has taken a course which no one, lying under such an imputation and conscious of its injustice, could be expected to take.

But we have done with Mr. Baily. We have now to consider a very different charge which the later correspondence involves and establishes against the whole body of the Council of Legal Education. The consolidated regulations of the Inns of Court provide, that the council shall consist of eight members, and that four of them shall make a quorum. A suggestion is made, that on the occasion of a certain election the council may have been misled, to the detriment of a candidate, by the neglect of one of their members, and inquiry is asked for. Every one knows that this means a serious charge against one of the council, and every one expects that each member will deem it his duty to attend, and give the matter his earnest consideration. Mr. Cox had consulted the Lords Wensleydale and Cranworth, than whom more able or impartial advisers could not be found. Their letters are before the council. What follows? A meeting is held consisting of four members only, *one of them being Mr. Baily!* and thus the accused person himself makes up the bare quorum of grand jurors who throw out the bill of indictment. Very naturally, the prosecutor declines to recognise this as a judicial act, and asks for an unpacked jury. The council reply that there is no reason for a reconsideration of the matter! Thus it appears that the legal education of students for an honourable profession is under the direction of a body of eight men, who assert and act upon the doctrine that it is right and decent for an accused person to sit in judgment on his own case, or rather to decide that no one shall judge it. In Mr. Baily's case there was a possibility and a hope that he might be able to clear himself, but as to the mis-

conduct of the whole council, or, at least, of all who do not promptly publish a protest against the act of the majority, there is no room for doubt.

THE READERSHIP OF CONSTITUTIONAL LAW —MR. BAILY, AND THE COUNCIL OF LEGAL EDUCATION.

THE following correspondence has been sent to us:—
49, Chancery-lane, 23rd June, 1866.

My Lord and Gentlemen,—Shortly after the Readership of Constitutional Law became vacant by the decease of Mr. Phillimore, I offered myself as a candidate for that office, and submitted to the Council of Legal Education testimonials from your Lordship, the Chancellor of the Exchequer, Vice-Chancellor Wood, Professor Goldwin Smith, the Lord Justice Knight Bruce, Mr. Giffard, Q. C., and the late Master of Trinity College, Cambridge.

Subsequently I received from Mr. Baily a message, to the effect, that it was desirable that I should give further information respecting my career at Cambridge, and my experience in tuition. I therefore sent him additional testimonials from persons of great eminence at Cambridge, namely, the Rev. S. Parkinson, prelector and tutor of St. John's College, Professor Adams, the Lowndean professor of astronomy, and Mr. Todhunter, the principal mathematical lecturer of St. John's College; and with these I sent a testimonial from Lord Curriehill.

A letter which I received from Mr. Baily after the election led me to fear that he had not submitted to the council for its consideration the testimonials which I intrusted to him. I have in two letters distinctly asked him whether he really did this. His replies shew (as I submit) that my later testimonials were not brought under the consideration of the council.

Mr. Baily returned to me the documents which I had confided to him, and I thereupon forwarded them to your Lordship, with a letter, complaining that Mr. Baily had not fulfilled the obligation which he had undertaken with respect to them.

To the last-mentioned letter I received no reply until after the Long Vacation. In October I had a letter from your Lordship, stating your belief that the council was aware of all my testimonials. But it is apparent from the context of the letter that the existence of the particular documents to which I referred was not present to your Lordship's mind. You stated that you did not remember any papers of consequence accompanying my letter, and that on your return to Italy you would cause a search to be made for them.

I now respectfully petition the Council of Legal Education to investigate the question of fact raised by your Lordship's letter of October last, and to inquire whether, previously to the late election of a reader of constitutional law, Mr. Baily neglected to submit to the consideration of the council testimonials which I had intrusted to him for that purpose.

The testimonials in question have only very recently been returned to me by your Lordship. So long as their existence was a matter of doubt, it was obviously useless to ask for this inquiry, and I have, therefore, refrained from doing so.

I respectfully submit that I am entitled to this inquiry as a matter of justice. My title in this respect is so clear that I do not presume to adduce any arguments in support of it.

I have the honour to be,
My Lord and Gentlemen,
Your most obedient servant,
HOMERSHAM COX.

To the Council of Legal Education.

Steward's Office, Lincoln's Inn, W. C.,
18th July, 1866.

Sir,—I am directed by the Council of Legal Education, at a meeting held this day, to state that they have read and considered your letter of the 23rd June, 1866, and that they decline to enter upon the inquiry suggested by you.

I am, Sir,

Your very obedient servant,
HOMERSHAM COX, Esq. EDWARD DAVEY.

56, Park-street, W., 27th July, 1866.

My dear Sir,—I am under the impression that I answered your letter, acquainting me with the advice you had received from Mr. Archibald Stephens, the day I received your letter, but, as I was a great deal engaged, it is possible I may not have done so. I have no hesitation in advising you to take the advice of Mr. Archibald Stephens. I think you ought to have had all your testimonials submitted to the council; and if the fact was, that any were kept back, you were not well used; and if the expression of that opinion can be of any use to you, although I do not know that it will be, you are at liberty to state it.

Yours faithfully,

HOMERSHAM COX, Esq. WENSLEYDALE.

40, Upper Brook-street, W., July 31, 1866.

Sir,—I have to acknowledge the receipt of your letter of this day's date, in which you inform me that the draft of your memorial to the Council of Legal Education was shewn to me by Lord Wensleydale, and that his Lordship informed you I considered the application a proper one to be made. I have no doubt that Lord Wensleydale correctly represented to you what passed, but I have no recollection of what passed between us, and I am, therefore, unable to say more. It is, of course, to be regretted if any testimonials you sent in were not brought before the Council of Legal Education before they proceeded to decide on the comparative merits of the different candidates.

I have the honour to be,

Your very obedient servant,

HOMERSHAM COX, Esq. CRANWORTH.

49, Chancery-lane, Aug. 10, 1866.

My Lord,—I solicit your Lordship's attention to the inclosed copies of letters from Lords Cranworth and Wensleydale.

On the 17th July, Mr. Archibald Stephens informed me, at an interview, that a meeting of the Council of Legal Education had been called in the previous week to consider my memorial, but a quorum was not present, and it was understood that the matter would stand over until after the Long Vacation.

On the 18th July the clerk of the council sent me a letter stating that on that day the council had considered my application, and declined to enter upon the inquiry suggested by me.

I called upon Mr. Stephens the next day. He expressed extreme surprise at this resolution, and considered that the subject ought to be considered by a full council. He strongly recommended me to renew my application after the Long Vacation, and undertook to support it.

On Monday last I called upon Sir Edward Ryan, and learned from him that at the meeting of July 18 a quorum of four members was present, and that Mr. Baily was one of them. I said, thereupon, "a very obvious remark might be made upon the circumstance that Mr. Baily completed the quorum." Sir Edward Ryan made no reply to that, but said that any motion brought before the council by Mr. Stephens would receive his most serious consideration.

The members absent from the meeting of July 18 were, your Lordship, Mr. Forsyth, Mr. Huddleston, and Mr. Stephens.

I abstain from all comment upon the transaction here narrated, but your Lordship will immediately perceive the grave reflections to which they give rise. I therefore respectfully ask you to direct your attention to them, and to the application which, under the advice of Lord Wensleydale and Mr. Stephens, I propose to make to the council. Considering the importance of the subject to me, I trust that your Lordship will favour me with a reply.

I have the honour to be,

Your Lordship's most faithful servant,
HOMERSHAM COX.

To the Right Hon. Lord Westbury.

49, Chancery-lane, Nov. 6, 1866.

My Lord and Gentlemen,—On the 23rd June last I memorialised the Council of Legal Education to inquire whether, previously to the late election of a Reader of Constitutional Law, Mr. Baily neglected to submit to the consideration of the council testimonials which I had intrusted to him for that purpose.

On the 18th July a letter was addressed to me by the clerk of the council, stating that at a meeting held that day the council had considered my letter of the 23rd June, and declined to enter upon the inquiry suggested by me.

I have been informed by several members of the council, that a majority of the members of that body was not present at the meeting of the 23rd June, and that they are prepared to give the subject of my application their most serious consideration.

I respectfully renew my petition for an inquiry into the circumstances alleged in my letter of the 23rd June, and further ask the council to give me an audience in order that I may explain the grounds upon which my application is founded.

I have the honour to be,

My Lord and Gentlemen,

Your most obedient servant,

HOMERSHAM COX.

To the Council of Legal Education.

Steward's Office, Lincoln's-inn, W. C.,
Nov. 12, 1866.

Sir,—I am directed by the Council of Legal Education, at their meeting held on Friday last, to state in reply to your letter, dated the 6th November instant, that in the opinion of the council there is no sufficient ground for a reconsideration of the question disposed of by the resolution of the council of the 18th July last.

I am, Sir,

Your obedient, humble servant,

EDWARD DAVEY,

Clerk of the Council.

To Homersham Cox, Esq.

THE NEW YORK CODE.

AT a meeting of the Society for Promoting the Amendment of the Law, on Monday last, the Hon. G. Denman, Q. C., M. P., in the chair, Mr. David Dudley Field, of New York, gave an account of the New York Code. He said—The law of New York is, in substance, the law of England, with such modifications as custom or statute may have introduced. The substratum is your common law. Our constitution explains it thus:—"Such parts of the common law, and of the acts of the legislation of the colony of New York, as together did form the law of the said colony

on the 19th April, 1775, and the resolutions of the Congress of the said colony, and of the Convention of the State of New York, in force on the 20th April, 1777, which have not since expired, or been repealed or altered, and such acts of the Legislature of the State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same." We had, also, previous to the last revision of the constitution, a judicial system fashioned upon the model of yours, with a Chancellor, Vice-Chancellors, and common-law judges, and a final appeal to the Upper House of the Legislature—the Senate. At the time of the last revision the Court of Chancery was abolished; a Supreme Court was established, having general jurisdiction in law and equity. Two commissions were constituted, which may be distinguished as the practice commission and the code commission, by which five codes have been prepared, intended to embrace the whole law of the State, common as well as statute, and styled respectively the political code, the civil code, the penal code, the code of civil procedure, and the code of criminal procedure. Each of these forms a separate volume, and, together with a sixth, the book of forms, profess to exhibit in one body our whole system of general laws. The portion of the law first taken hold of was the civil practice. When the bill constituting the practice commission was pending, I drew a sentence, which was inserted and passed, in these words:—"And it shall be the duty of the said commissioners to provide for the abolition of the forms of action in cases of common law, and for a uniform course of proceeding in all cases, whether of legal or equitable cognisances." The fundamental proposition with which the practice commission began was this:—"The distinction between actions at law and suits in equity, and the forms of all such actions and suits heretofore existing, are abolished, and there shall be in this State hereafter but one form of action for the enforcement or protection of private rights, or the redress or prevention of private wrongs, which shall be denominated a civil action." It was therefore decided, not only that the changes should be made which I have mentioned, but that a code should be prepared containing the whole law of procedure. In carrying out this design, it is provided that a suit shall be commenced by the service of the summons. The plaintiff is to set forth his case in a complaint, stating the facts concisely, without evidence or argument, and asking for such relief as he thinks himself entitled to. A mistake in respect to the relief is, however, not to do him a prejudice, for the Court is to give him any relief to which he appears entitled, whether he asks for it or not; and that a mistake even in his statement of facts may not do him a prejudice, the Court is empowered to allow him to amend, by conforming the pleading to the facts found on the trial. The defendant is to meet the complaint by demurrer or answer; and the plaintiff may, in certain cases, reply to the answer. There the written allegations are closed, and the case is set for trial. The trial may be by the Court, by jury, or by referee. If money only, or specific real or personal property, or a divorce, be demanded, the trial is to be by jury, unless a jury is waived, or a long account is involved. In other cases the trial is by the Court, with power, upon consent of parties, or in certain cases without consent, to send the trial to a referee. When the facts are thus ascertained by verdict of a jury, or by the finding of the Court or referee, the judgment follows, according to the right of the case, whether such as was before denominated legal, or such as was denominated equitable. If execution is issued, and returned unsatisfied, the defendant may be brought before a judge, and examined about his property;

and if anything is discovered which the sheriff could not reach, it is applied to the judgment. The code of civil procedure, or the substantial part of it, was immediately enacted by the Legislature. It went into effect on the 4th July, 1848, and has ever since remained the law of the State. The code of criminal procedure has not yet been acted upon by the Legislature of New York; but, in the meantime, it has been adopted by ten of the States and territories of the Union, while the code of civil procedure is now the law of sixteen of them. The code commission first organised by the Legislature broke down, and became extinct in 1852. I drew a bill for its resuscitation, which, after much opposition, was enacted by the Legislature. The commission thus reorganised, completed its labours last year, having prepared, distributed, revised, reprinted, and redistributed the three codes of substantive law which had been intrusted to its hands. The last finished of the three, the civil code, not having been issued from the press till October, 1875, the whole work of this commission remains to be acted upon by the Legislature of New York. Meantime, the civil and penal codes have been adopted by the Legislature of the territory of Dakota. The mode of proceeding was this. A careful analysis was in the beginning made and published. The political code was first taken up, then the penal code, and lastly the civil code. In their preparation the plan was first to collect all the existing laws on the different subjects, then to reconcile what was contradictory, strike out what was superfluous, obsolete, or mischievous, add where there appeared to be deficiencies, arrange the whole in scientific order, and express each section in as concise and exact language as possible. It will be readily perceived how rapid the process of condensation thus became; as, for example, after treating of obligations in general, it became unnecessary to repeat any of the rules there set forth, when the time came for treating of the obligations arising from particular transactions. Now every lawyer is obliged to purchase and read the same thing in many different forms. Thus, in a treatise on sale, he will find the greater part of what he has already read in a treatise on contracts. Let us take, for example, any particular title of the civil code, that, for instance, on negotiable instruments. The first process was to collect all the decisions and statutes on the subjects of bills of exchange, promissory notes, cheques, bonds, bank notes, and certificates of deposit, so as to make sure, if possible, that nothing heretofore decided or enacted, and still remaining, was omitted. After this came, first, elimination, then addition, then arrangement, and last, expression. When authorities were irreconcilable, one was omitted, and another was retained, or both were modified. When they appeared unjust they were rejected. New provisions which were considered desirable were introduced. The whole was then placed in what appeared to be a logical and scientific arrangement; and the language of each section or article was considered and reconsidered, written and rewritten, printed and reprinted, till it appeared as short and precise as it could be made. Notes followed the sections, containing explanations and references to adjudged cases. In this way, the various rules applicable to the negotiable instruments which I have enumerated were reduced into 117 sections of the civil code. The civil code consists of 2034 sections, each section being intended to give by itself a distinct rule of law, and corresponding generally to the article in the continental codes. The labour was almost incredible. Some idea of it may be formed when one is told that the sections were written and rewritten many times, and printed and reprinted still oftener. After all, there are, I doubt not, many omissions and many errors. All that I will

venture to affirm is, that no labour was spared in the preparation, that the work is as perfect as the mind bestowed upon it could make it, and that it is to be preferred to the shapeless and incongruous mass said to contain the law of America and England. Do not suppose it to have been pretended or imagined that every case which can arise has been foreseen or provided for. Therefore, if there be any rule of the common law not mentioned in the code, it will continue to exist as it was before; while, if a new case arises, not foreseen, and therefore not provided for, it will be decided, as it would now be decided, by analogy to a rule expressed in the code, or to a rule omitted, and therefore still existing outside of the code, or by the dictates of natural justice. Perhaps I ought not to close these observations without taking notice of three objections which I have found to be often stated by those who would otherwise prefer a code—first, the difficulty of passing it; second, the temptation to tamper with it by frequent amendment; and third, the glosses likely to be put upon it by false interpretation. Let us give what seems to be a sufficient answer to each. A code may be passed in one of these ways. It may be considered in the Legislature section by section, and thus passed as any other act of legislation is passed. This was the case with regard to the revised statutes of New York in 1830, and an extra session of the Legislature was held for that purpose alone. Another method is, to subject the code to a critical examination by a select committee of the Legislature, and then to pass it as amended and reported by such committee; that was the case with regard to the revised statutes of Massachusetts. A third method is, to take it from the hands of its framers, having provided for such examination and criticism while in their hands as to give the best assurance of care and accuracy. That was the case with the French codes. The New York code of civil procedure was passed mainly as it was first reported. The second objection has, I think, no foundation in fact. There will be, of course, occasion for some amendments at first, when the code is upon its first trial, as there is occasion for a good deal of adjustment when a new piece of machinery is first worked; but as soon as all the parts are adjusted, there will be less disposition to change, as there will be less need of it. If an amendment be necessary, it is made with more care and greater security than in an ordinary statute, since it is made by substituting an amended section for the previous one. Let any one look at the Code Napoleon, and he will see how few of the original articles have been abrogated or changed. The third objection bears equally on all comprehensive legislation. Probably no statutes have ever been the subject of so much judicial interpretation as Magna Charta and the Statute of Frauds; yet who would wish them never to have existed? The constitution of the United States has been the subject of infinite debate, judicial and legislative, ever since it was promulgated, yet all Americans appeal to it as their guide in peace, and their security in war. Every statute, grave in character, and involving great interests, will be greatly debated; but that is no reason against its existence, or against an effort to render it more perfect or better understood. The work, whose origin and history have been thus briefly told, is the first attempt ever made to codify the common law of England. How it has been performed it does not become me to say. If it should prove useful, either as law for any portion of my fellow men, or as model or suggestion for others, the reward will be more than equal to the service.

Several gentlemen addressed the meeting; among them,

Mr. *Greaves* said he had looked at the codes pre-

pared in America with the warmest and most intense interest. As far as his opinion went, the American codes would be found to be models of perfection, considering the difficulties which the gentlemen who prepared them had to contend with. They could not be put in a better form, and he prophesied the perfect success of the codes.

Mr. *John Hodgkin* said they should all agree that they were indebted to Mr. Field for the details he had given them. It was encouraging to them to think that Mr. Field, after going through such a work, was there alive to tell them of it. He was now inclined to believe that they had committed an error in saying they would be satisfied with a digest instead of a code. They should require a code, though the difficulties in the way of obtaining it were no doubt considerable.

Mr. *Lowe* said he did not feel that he was quite competent to give an opinion as to the mode in which Mr. Field and his colleagues had performed their duties. He had always referred to their code with the greatest instruction, but he could not say whether it would realise the expectations entertained of it. It was a digest rather than a code, and it was necessary to consider that. Three times he had been afforded the opportunity of obtaining experience on the subject. Once it had been his duty to pass a measure in the nature of a code, called the Limited Liability Bill. It contained 110 clauses, and passed through the Houses of Lords and Commons without any hostile amendment. That shewed what could be done. His next experience was in the office of Vice-President of the Committee of Council. His predecessor had caused a digest to be made of their rules, and out of that digest they had made a quasi code. They first got the rules into some 250 clauses. When they looked to it as a whole, they found an immense deal of surplusage, and they found they could get the same thing into 130 clauses. He had experience in the third case as one of the commissioners for making laws for India. They prepared a civil and criminal code for India, which the Legislative Council had passed. The civil code was framed upon the principle of abolishing written pleadings altogether. The machinery of the court had answered the expectation of the framers, and there could be tried by it everything, from a complicated suit in equity to an action for a shilling. The consequence was, that the Courts of India had wiped away their arrears of business, and there was now no delay there in the administration of justice. By the criminal code they abolished indictment, and substituted the reading of the article of Lord Macaulay's Criminal Code to the accused, and gave him a copy of the deposition. They had thus got rid of all flaws that might be in an indictment, and he believed it had been found to do substantial justice. They had applied themselves to make a code of laws for India, but they had not done as much in the matter as he should wish. They declared that the code should contain the whole law, and where it was not so contained, the law should be decided, not by reference to the common law, but by reference to equity and good conscience. They had prepared a law in reference to succession in cases of testacy and intestacy, and with respect to bailments, guarantees, &c.; and they were proceeding to deal with bills of exchange. The only way the question before them could be solved was to try the experiment; and whatever the experiment cost, it was well worth trying. On the part of himself and the commission with which he was connected, he begged to return thanks to his old friend Mr. Field for his labours in this matter.

Mr. *Field* assured Mr. *Lowe* that he was wrong in supposing they had only prepared a digest in America. They had really prepared a code.

GENERAL EXAMINATION OF STUDENTS.

MICHAELMAS TERM, 1866.

AT the General Examination of Students of the Inns of Court, held at Lincoln's Inn Hall, on the 30th and 31st October, and on the 1st November, 1866, the Council of Legal Education have awarded to—

Edward Ford, Esq., student of Lincoln's Inn, a studentship of fifty guineas per annum, to continue for a period of three years.

Charles Henry Anderson, Esq., student of the Inner Temple, an exhibition of twenty-five guineas per annum, to continue for a period of three years.

Thomas De Courcy Atkins, Esq., student of the Middle Temple, and John Shortt, Esq., student of the Middle Temple, certificates of honour of the first class.

Richard Buxton Bolton, Esq., student of the Middle Temple; William Stewart Byrth, Esq., student of the Middle Temple; Wilfred Kendall Clementson, Esq., student of Lincoln's Inn; John Victor Douglas De Wet, Esq., student of the Middle Temple; Alfred Allan Douglas, Esq., student of the Middle Temple; John Bradley Dyne, Esq., student of Lincoln's Inn; Francis Fleming, Esq., student of the Middle Temple; William Haughton, Esq., student of the Middle Temple; Charles John O'Malley, Esq., student of the Middle Temple; Charles William Rocher, Esq., student of the Middle Temple; William Anthony Musgrave Sheriff, Esq., student of the Middle Temple; and Arthur John Williams, Esq., student of the Inner Temple, certificates that they have satisfactorily passed a public examination.

By order of the Council,

(Signed) EDWARD RYAN, Chairman, pro tem.
Council Chamber, Lincoln's Inn,
Nov. 9, 1866.

CAUSES ENTERED AFTER THE FOURTH DAY OF MICHAELMAS TERM.

COURT OF QUEEN'S BENCH.

NEW TRIALS.

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THE JURIST.

LONDON, NOVEMBER 24, 1866.

THE liability of owners of land on the banks of a river, with regard to any buildings placed by them on any part of the bed of the river dividing their properties, hitherto attended by some doubt, has recently been under the consideration of the House of Lords in *Beckett v. Morris* (12 Jur., N. S., part 1, p. 803; 1 Law Rep., Scotch app., 47). As the Scotch law is the same as the English on the general right of a riparian proprietor, and was admitted to be so in that case, and as that case lays down a general principle with reference to the point above adverted to, it may be useful to draw attention to it, first mentioning, by way of preface, one or two other points which may be said to lead up to it, on which the law had already been settled, although erroneous notions had for a time prevailed.

And first, with regard to the ownership of the soil, an opinion had prevailed, that where different properties were situated on the opposite sides of, and divided by, a river or watercourse, that the whole of the soil of the river was in some sort common to both proprietors; but it is now settled, that the boundary line of the two properties must *primâ facie* be taken to coincide with the medium filum of the stream, and that, under ordinary circumstances, each proprietor has the ownership of the soil on his side up to such line. See *Wihart v. Wyllie* (1 Macq. 389), where Lord Cranworth (then Lord Chancellor), in moving that the decision appealed against should be affirmed, said, "If a stream separates properties A. and B. *primâ facie*, the owner of the land A., as to his land on one side, and the owner of land B., as to his land on the other, are each entitled to the soil of the stream, usque ad medium aquæ—that is, *primâ facie* so. It may be rebutted, but generally speaking, an imaginary line running through the middle of the stream is the boundary; just as if a road separated two properties, the ownership of the road belongs half way to one, and half way to the other. It may be rebutted by circumstances; but if not rebutted, that is the legal presumption. Then, if two properties are divided by a river, the boundary is an imaginary line in the middle of the river; but to say that the whole of the river is a sort of common property, which belongs to no one, is not a correct view of the case."

Again, as to the use of the water of the stream, an erroneous doctrine once existed, that the first appropriator of water had a right to continue to divert the stream to the extent of such appropriation; no matter how injurious such diversions might be to the rights of parties who should afterwards seek to use the stream. But it has now long been settled law that there is no such right of appropriation. The distinction between the property in the soil and the right to the use of the water was clearly explained by Sir John Leach, in delivering judgment in *Wright v. Howard* (1 S. & T. 203), where he said, that *primâ facie* the pro-

prietor of each bank of a stream was the proprietor of half the land covered by the stream, but that there was no property in the water. Every proprietor had an equal right to use the water which flowed in the stream, and that, consequently, no proprietor could have the right to the water to the prejudice of any other proprietor; and he then proceeded to shew that an actual grant or license, or prescriptive user, could alone give him the right to divert the stream. And in Kent's Com., p. 439, speaking of the riparian proprietor, it is said, "He has no property in the water itself, but a simple usufruct while it passes along. *Aqua currit et debet currere ut currere solebat, is the language of the law;*" and in *Embrey v. Owen* (6 Exch. 369), following upon the well-known decision of *Mason v. Hill*, Mr. Baron Parke said, "Flowing water is *publici juris, not in the sense that it is bonum vacans, to which the first occupant may acquire an exclusive right*, but is public and common, in this sense only, that all may reasonably use it who have access to it."

These general principles, as to the right to the soil, and the right to the water, are both again involved in the decision of the recent case in the House of Lords we first adverted to, viz. whether a riparian owner has a right to erect any building on the bed of the river. The case of *Beckett v. Morris* was an appeal from the decision of the Second Division of the Court of Session in Scotland, and without giving the facts in detail, it is sufficient to state that the result of the opinions of the judges of the Second Division was, that a riparian proprietor has no right to erect any building on the bed of the river; and that if he does so, although an opposite neighbour may be unable to prove that any damage has actually happened to him by the erection, yet, if the encroachment is not of a slight and trivial, but of a substantial description, it must always involve some risk of injury. And Lord Benholme had said, "Without my consent" (i. e. the consent of the proprietor of the other side of the river), "you are not to put up your building in the channel of the river, for that in some degree must affect the natural flow of the water. What may be the result no human being with certainty knows, but it is my right to prevent your doing it; and when you do it, you also sue an injury, whether I can qualify damage or not." And Lord Neaves had said, "Neither can any of the proprietors occupy the alveus with solid erections without the consent of the other, because he thereby affects the course of the whole stream. The idea of compelling a party to define how it will operate upon him, or what damage or injury it will produce, is out of the question." And the Lord Chancellor said, "These views appear to me to be perfectly sound in principle, and to be supported by authority. The proprietors upon the opposite banks of the river have a common interest in the stream; and although each has a property in the alveus from his own side to the medium filum fluminis, neither is entitled to use the alveus in such a manner as to interfere with the natural flow of the water. My noble and learned friend, the late Lord Chancellor, during the argument, put this question—'If a riparian proprietor has a right to build upon the stream, how far can this right be supposed to extend? Cer-

tainly,' he added, 'not ad medium flum; for if so, the opposite proprietor must have a legal right to build to the same extent on his side.' And then, it seems to me, that neither proprietor can have any right to abridge the width of the stream, or to interfere with its regular course; but anything done in alveo which produces no sensible effect on the stream, is allowable."

Now, it will be observed that this ruling is not more than the embodiment and application of the principles as to the right to the soil and the right to the use of the water, which had already been arrived at by the decisions we have adverted to, though not without some difficulty, on account of the mistaken views that had been promulgated; and in the above ruling of the Lord Chancellor, Lord Cranworth and Lord Westbury agreed, and we must refer to their judgments at length in the report for their reasons, therein fully assigned, and content ourselves with one or two extracts from them as to the necessity of how far it is necessary to prove any actual damage in order to establish the right of the complaining proprietor to the interference and protection of the Court. Thus, in Lord Cranworth's judgment it is said—"Lord Benholme says truly, that what may be the result of any building in the alveus, no human being knows with certainty. The owners of the land on the banks are not bound to obtain, or be guided by, the opinions of engineers, or other scientific persons, as to what is likely to be the consequence of any obstruction set up in waters in which they all have a common interest. There is in this case, and in all such cases there ever must be, a conflict of evidence as to the probable result of what is done. The law does not impose on riparian proprietors the duty of scanning the accuracy, or appreciating the weight of such testimony. They are allowed to say, 'We have all a common interest in the unrestricted flow of the water, and we forbid any interference with it.' This is a plain, intelligible rule, easily understood and easily followed, and from which, I think, your Lordships ought not to allow any departure." And Lord Westbury, as to the same point, after pursuing a similar train of reasoning, concluded as follows:—"It is wise, therefore, to lay down the general rule that, even though immediate danger cannot be described, even though the actual loss cannot be predicted, yet, if an obstruction be made to the current of the stream, that obstruction is one which constitutes an injury which the Courts will take notice of, as an encroachment which adjacent proprietors have a right to have removed. In this sense, the maxim has been applied by the law of Scotland, that *melior est conditio prohibentis*, namely, that where you have an interest in preserving a certain state of things in common with others, and one of the persons who have that interest in common with you desires to alter it, *melior est conditio prohibentis*, that is to say, you have a right to preserve the state of things unimpaired and unprejudiced in which you have that existing interest." (See 1 Law Rep., Scotch app., pp. 55, 56, 58, 62).

We will only make one other observation on this important case, viz. that it was conceded, in the opinions

delivered, that a fence or bulwark on the bank is allowable, provided it does not obstruct the river or divert its course.

SUCCESSION DUTY.—FOREIGN APPOINTMENT.

THE case of *The Attorney-General v. Upton*, in the Court of Exchequer (12 Jur., N. S., part 1, p. 489), has not only displaced *Barker's case* (7 Jur., N. S., part 1, p. 1061) as an authority, but has also completed the demolition of *Lovelace's case* (5 Jur., N. S., part 1, pp. 428, 694; 4 De G. & J. 340) and *Wallop's case* (10 Jur., N. S., part 1, p. 328; 1 De G., J., & S. 656). It will be remembered that in *Barker's case* the question was, whether, under an appointment of land by a widow in exercise of a general power given to her by her husband's will, the appointee took a succession from the appointor or from the donor of the power, as predecessor, and that the Court held that the donor of the power was the predecessor. That decision was founded on *Lovelace's case* (discussed 7 Jur., part 2, p. 507; 10 Jur., part 2, p. 127, 137; 12 Jur., part 2, p. 71), where the question was as to the payment of duty in respect of property appointed by will under a general power, the appointor and the appointee residing abroad, but the power having been created by an English settlement. Sir W. P. Wood decided the case against the Crown upon an untenable argument founded on the 4th section of the act, which we need not stop to examine, because it is obviously untenable, and was repudiated even by the counsel for the succession in *Re Barker*; but upon appeal the Lords Justices held, that the case was within the 2nd section, and that duty was payable by the appointee, notwithstanding the foreign domicile of themselves and of the appointor, because they took, not from the appointor in that character, but from the settlor, who created the power while domiciled in England and by an English settlement. This, and this only, was the ground on which that case was decided by the Lords Justices. "The settlement," said Lord Justice Knight Bruce, "was an English marriage settlement, made in England upon the marriage of two English persons. It affected English property only, but the lady's English domicile of origin was, I think, before the year 1852 (the date of her testamentary appointment) changed for a foreign domicile. . . . The change of domicile now does not seem to me material. The appointed property would, if she had not exercised her power of appointment, not have been a part of her estate." Lord Justice Turner said, "I cannot go the length of holding that this act of Parliament, general in its terms, does not apply to the case of a succession under a British settlement of British property, vested in British trustees, and falling under the jurisdiction of a British court."

The circumstances in *Re Wallop's Trusts* were undistinguishable from those in *Lovelace's case*, and the decision was also in favour of the Crown. Lord Justice Knight Bruce gave no reason for his decision, but Lord Justice Turner, tacitly abandoning the sole ground of decision in *Lovelace's case*, asserted and relied exclusively on the proposition, that as, in the case of a devise of British real estate by a testator domiciled abroad, the devisee would be liable to succession duty, so the legatee of the personal estate of a person so domiciled, or the appointee of the donee of a power so domiciled, was intended to be equally liable. *Wallop's case* was followed in *Re Capdevielle* (10 Jur., N. S., part 1, p. 1155) and *The Attorney-General v. Wahlstatt* (Id., p. 1159), in each of which the question arose upon a be-

quest of personal estate by the will of a testator domiciled abroad, and not on an appointment. But Pollock, C. B., and Channell, B., doubted the soundness of the doctrine. In *Wallace v. The Attorney-General* and *Jeeves v. Shadwell* (11 Jur., N. S., part 1, p. 937), the question again arose upon bequests by testators domiciled abroad of personal property situate in England; and the cases last cited, and the doctrine of Lord Justice Turner in *Wallop's case*, were expressly overruled, Lord Chancellor Cranworth holding that the act only applies to persons who become entitled by virtue of the laws of this country, and that the title to personal estate under the will of a foreign testator does not arise by virtue of our laws. His Lordship then distinguished the cases of appointments under general powers:—"They were both cases of testamentary appointments, not of wills, and such an instrument must necessarily be construed by our own laws, not by that of the domicile of the person executing the power."

The distinction suggested by Lord Cranworth left undetermined the question as to the rate of duty payable by the appointee when he is related to the donee and to the donor of the power in different degrees; and that was the question decided in *The Attorney-General v. Upton*, into the circumstances of which the element of foreign domicile did not enter; but the appointee being a stranger to the appointor, and a nephew of the donor of the power, the Crown contended that the appointor was the predecessor, and obtained a decision accordingly; the express ground of decision being that, as the 4th section of the act treated the appointed property as the property of the donee of the power, for the purpose of being charged as a *succession taken by him*, it must be taken to be his property for all the purposes of the act. This was put very clearly by Bramwell, B.:—"When it is said that the donee of a power shall be deemed to be entitled, at the time of his exercising such power, to the property or interest thereby appointed, it follows that from that time he is made a new terminus of succession. Suppose a devise to A. for life, with a general power of appointment to B., who appoints to himself for life, remainder to C. in fee, from whom does C.'s interest come? Not from the testator, because, by the very words of the statute, B. has already been made successor to him as to the whole fee after A.'s life estate. It must then be from B., who is taken, by the exercise of the power, to have acquired the fee as his own." So Pigott, B., said—"On the exercise of the power, the section creates an interest in the donee; and having once vested that estate in her without any qualification, it must be taken to be hers for all the purposes of taxation, and to be transmitted from her to the defendants."

It will be seen that this decision, standing alone, does not expressly conflict with *Lovelace's case*. But there is only one step from it to the displacement of that case from the only ground which, in *Wallace v. The Attorney-General*, Lord Cranworth had left for it. If for all the purposes of taxation under the Succession Duty Act, the donee of a general power who exercises it is to be regarded as acting as absolute owner of the appointed property, it follows, that the origin of his title to it cannot be looked at, for the purpose of taxing a disposition made by him. In all questions under the act, the appointee takes from the appointor as owner, and there is not a word in the act which makes anything depend on the mode in which the ownership was acquired. For the purpose of ascertaining whether an appointee takes a succession, or is charged by the act, the appointment is the "disposition," and the appointor is the "predecessor" (or "the settlor, disposer, testator, obligor, ancestor, or other person from whom the interest of the successor

is derived"), within the 2nd section of the act; and it would be as wide of the mark to inquire whether a foreigner, who appoints personal property, derived his power from an English instrument, as to inquire whether a foreigner, who assigns or bequeaths personal property, became entitled under an English assignment.

LOCAL TAXATION.

If in examinations for civil service a little less attention were given to Milton's sonnets, and much more to the literature most closely connected with the objects of the office sought by the candidate, the servants of the State would probably be not less distinguished by general literary cultivation and efficiency, and would certainly be more able to assist in improving the laws and regulations under which they act. Thus, if familiarity with the most important works and essays on political economy and other "social sciences," were a necessary qualification for every office (above the lower grades) in which anything could be done, whether at discretion or by rule, contrary to the teachings of those sciences, we might reasonably expect valuable additions to science, and improvements in the application of it, from minds so trained and qualified to reflect, and provided with data for reflection. The test, of course, should be a test exclusively of reading, and not of orthodoxy. "What is the opinion of Pythagoras concerning wild fowl?" might be asked, but not "What thinkest thou of his opinion?"

The chairman of the Metropolitan Board of Works, in his evidence before the select committee on metropolitan local government, has lately given an illustration of the value, in a departmental officer, of cultivation and views extending beyond the routine of his office. Sir John Thwaites has pressed upon the consideration of the Legislature a sound principle for adjusting the burthen of local taxation, which is not new in theory, and has even been partially acted upon, but of which the importance could hardly have been seen so clearly, or illustrated so forcibly, by any one who had not had ample experience of the imperfections of the existing practice; and he has even succeeded in inducing a committee of the House to express a feeble opinion in favour of moving half way towards the right position.

The framers of the acts imposing a property tax wisely disregarded the favourite and shallow maxim, that "all persons not under legal disability should be free to make what contracts they please," and expressly denied validity to every contract for shifting the burthen of the property tax from the shoulders appointed by law to bear it. Sir John Thwaites has pointed out the importance of applying the same principle to local taxation. He says—

"Our rate is, in point of fact, a sewers rate, and is subject to all the incidents of a sewers rate. That, in itself, is a landlord's tax, but it has been the practice, for many years, for the landlords to dislodge that liability by covenanting with their tenants that the tenants shall pay the sewers rate, and casting the charge upon the occupier. One is met immediately by the statement, that that arrangement is made with the distinct understanding that the landlord accepts a smaller rent in consequence of casting that liability upon the tenant. In theory it would appear to be so, but in practice it is not so. For example, we have levied on the metropolis in the ten years for which the board has been in existence a very large amount of taxation other than that due to sewers. When the Metropolis Local Management Act came into operation in 1856, or rather, when it was passed in 1855,

the principle of a sewers rate was continued, for what reason I know not, except that we succeeded to a body whose duty it was to construct and maintain sewers, pure and simple; but our powers extended very much beyond that of sewers, and we were called upon to carry out, and have in practice carried out, other improvements, such as the formation of new streets, the widening of existing streets, and the formation of public parks for the health and recreation of the people, and yet we are called upon to carry out these improvements by the means of a sewers rate, which the landlord has dislodged, and practically made an occupier's tax. Now, supposing, for example, that one of the large proprietors of the soil in the metropolis, twenty years ago, granted leases to 500 persons with the ordinary covenant that they should pay the sewers rate, surely it never could be alleged that it was a part of the contract, twenty years ago, to undertake the widening of streets, the formation of new streets, and the formation of parks and public buildings, as a part of the expenditure due to sewers, yet such are the covenants existing in many cases in the leases of these large proprietors. Indeed, the sewers rate, which in law is a landlord's tax, is becoming more and more an occupier's tax, and hence the grievance to which I have referred, that the extension of direct taxation on the occupier would become oppressive unless some other mode of raising funds were provided by Parliament. Therefore, I suggest that the board should have the power of levying, I will not call it a property rate, but a rate on property; and that all proprietors, whatever interest they may enjoy in any property, should pay in proportion to the interest which they have, and that it should not be lawful for them to object, or to cast that burthen on the occupier; and that the principle to be adopted should follow the practice in respect of the property tax, where it is not lawful for the landlord to compel the tenant to pay. You would then take the property at its right, namely, at its full net annual value, and you would travel down, catching every interest, whether it was that of a mortgagee, or of a person who had a beneficial lease, until you came down to the ground rent, each party paying in proportion to the property or interest which he might have in that building. I would propose at the same time, that, coupled with that provision, we should have power to levy a sum, restricted, if needs be, by Parliament to any particular amount, but that we should levy at the same time an equal or a smaller sum upon the occupiers, so that the board should not, by any caprice of its own, cast any burthen upon property, but that the occupiers should bear what might be considered a fair proportion of the rated expenditure for metropolitan improvements. I venture to suggest, that the principle could be carried out without difficulty, and the proper amount would be obtained from those large proprietors who are not now contributing one shilling to the main drainage rate, and to the improvement of streets. In point of fact, an immense advantage results to these large proprietors from the improvements which we are carrying out, and they receive a reversionary value without paying one shilling to metropolitan taxation."

Another source of inequality in the incidence of taxation according to the present practice, is thus indicated:—

"I hold that, in imposing any tax, we must have regard to the ability of the party to pay. This metropolis differs very much from other towns; it is more like a number of provinces grouped together than a town with an united interest, and an interest in common. The interests are separate and distinct, and hence the inequality of rating in the one district or in

the other. But we have an illustration of what I have stated very forcibly placed before us by a contrast in the case of a clerk, for example, who is receiving his 250*l.* a year, and who occupies a house at the annual rent of 50*l.* That clerk is called upon to pay in rates and taxes about 25*l.* in the year. On the other hand, we have a merchant or a professional man, occupying premises of a rental not exceeding that of the clerk, who has an income of 250*l.* a year, and yet the merchant or the professional man is realising an income of 12,000*l.* or 15,000*l.* a year, and still his contribution to the metropolitan burthen is measured by the amount of his rating, instead of by his ability to pay; and hence the statement, which is not unfrequently made with great truth, that the metropolis has reached its limit in direct taxation, and that any extension of that principle would become oppressive. It is stated with equal truth, that the metropolis is rich enough to pay for all its improvements, and the contradiction in those statements is found in the system of direct taxation being oppressive on a certain class and rank of citizens, but not reaching those whose ability in the payment of taxes is far beyond that class. You have the merchant, who has all the advantages of the sanitary condition of the metropolis, improved by these outlays from time to time, making his 10,000*l.* or 12,000*l.* a year, riding off by rail to a distance beyond the metropolitan area, and he is literally contributing towards the metropolitan debts, not more than one of his junior clerks, and yet that has been deemed up to this time to be a sound system of taxation. I have long doubted the correctness of the basis of the poor's rate as a fair means of taxing. That is a view which is very strong in my own mind, and I think that the system requires alteration. It may be difficult to say how this principle is to be applied; you have the rateable property of every one within the metropolis, and you levy upon that, and that is taken as a fair criterion of the business which is carried on by the party, and of his power to pay. I deny it; on the contrary, I think that it acts very prejudicially and oppressively upon a certain class of tradesmen who in many cases are rated 7*s.* or 8*s.* in the pound, and any additional rating would become very oppressive; whereas, the parties who are making large sums are not rated proportionably for these common purposes. It may be alleged that they are caught by the national machinery, and have to contribute to the imperial revenue by means of the property tax. But if it be sound that they should pay in larger proportion than the person whom I have described, who is paying out of a small income, surely it is sound in respect of local taxation, where all citizens should be equally called upon to pay to the common burthen."

These are sound views, so far as they go. They are imperfectly adopted by the committee, who propose, "that in any arrangement of the financial resources of the Metropolitan Board, a portion of the charge for permanent improvements and works should be borne by the owners of property within the metropolis, the rate being, in the first instance, paid by the occupier, and subsequently deducted from his rent, as is now provided in regard to the general property tax. Your committee further recommend, that whenever improvements or other works undertaken by the Metropolitan Board are of magnitude, and of a permanent character, the charge for them should be defrayed, in the first instance, by loans, to be raised by the board on the security of its rates; and that the loans should be repaid by equal annual instalments, spread over a number of years proportionate to their amounts, and that the charge for the first instalment of them should be levied within the year in which the expenditure is commenced."

The committee seem to distinguish between "improvements or works of magnitude and of a permanent character," and other permanent improvements; for they recommend that the charge for the former only should be defrayed by loans, to be repaid by annual instalments spread over a number of years, "proportionate to their amounts." This is a distinction which it is not easy to understand. An improvement of a permanent nature ought to be paid for by the several persons having interests in the property improved in proportion to the values of their interests, whether the cost be great or little; and this cannot be done under our system of occupation, unless the cost is raised from those who are ultimately to bear it, by a rate spread over many years. Practically, the repayment with interest of an expenditure of 35,000*l.* by an annual rate of about 1000*l.*, to be paid by every person having an interest in the rated property in proportion to the clear rental which it produces, (or, in the case of an occupier, would produce to him if it were let at a rack rent), without any power to shift the burthen, would be a fair adjustment of the burthen. The occupier at a rack rent would thus, contrary to the proposal of the committee, pay nothing for the improvement of his landlord's property; and he ought to pay nothing; but he would from time to time, if his tenure were determinable by his landlord, be called upon to pay the actual yearly value of the property for the time being; and if his tenure were for a fixed term, and the value improved during the term, he would be rated at the improved value, and would only deduct a due proportion from the rent. The just rule, therefore, would be, that all moneys required for lasting works or improvements of every description should be raised by borrowing, and repaid by instalments spread over a period of thirty or forty years, to be levied by rates imposed according to the principle of the property tax on houses. The repayment of loans for improvements of a less permanent character should be spread over a shorter period. The mere occupier should never be rated, directly or indirectly, for anything beyond current expenditure properly chargeable upon income. He will pay in rent for improvements according to their effect upon the annual value of the property which he occupies.

THE JURIDICAL SOCIETY.

A MEETING of the members of the Juridical Society was held on Wednesday evening (November 14), at No. 4, St. Martin's-place; Mr. Edward James, Q. C., M. P., presided.

A paper was read by Mr. C. H. Hopwood, on "Martial Law, and the Responsibility of those who execute it." Mr. Hopwood commenced by remarking, that the question referred to in the paper, was one of great and exciting interest, and should be calmly treated; and he hoped to deal with the subject without personal or local allusion to any extent. By some it was understood that martial law was no law at all, that no responsibility rested on the actors under it, and that it was part of the royal prerogative. By others it was affirmed that martial law was allowed by law though by no means defined by positive law, and that proceedings under it might be reviewed by the law. By martial law he meant a *bonâ fide* resort to force to restore public order when legal proceedings became inadequate. If any person, under cover of martial law, had procured the death of a personal enemy, pretending he would be a traitor, such person would be liable to be tried for his life under the common law of England. Martial law, as it was understood by foreign

jurists, was unknown to the law of England. A resort to force, when necessary, was allowed, and that was what was called martial law, but it was not derived from the royal prerogative, and the persons who acted upon it from necessity, were accountable for their acts.

He quoted Lord Coke, Lord Hale, the *Petition of Right*, C. B. Comyns, and many other authorities.

Mr. Worsley, Mr. Best, Mr. Charles Clark, and Mr. H. W. Elphinstone took part in the discussion.

The proceedings terminated with votes of thanks to Mr. Hopwood and to the chairman.

CALLS TO THE BAR.

THE undermentioned gentlemen have been called to the Bar:—

LINCOLN'S-INN.—Edward Ford, Esq., B.A., holder of the studentship of Michaelmas Term, 1866; John White, Esq., M.A.; Charles Hall, jun., Esq., B.A.; John Bradley Dyne, jun., Esq., B.A.; Robert Hawthorn Collins, Esq., B.A.; John Templar Prior, Esq., B.A.; William Taylor Warry, Esq., B.A.; Robert Holford Macdowall Bosanquet, Esq., B.A.; Gerard Finch Dawson, Esq., B.A.; John Percival Balmer, Esq., B.A.; John Henry Reade, Esq.; George Hurley Barne, Esq., B.A.; George Giffard Dinely, Esq., B.A.; and Wilfred Kendall Clementson, Esq., B.A.

INNER TEMPLE.—Edward Wilberforce, Esq.; Edward Talbot Day Jones, Esq., M.A.; Edward Bromley, Esq., B.A.; George Wood Hill, Esq., B.A.; James Brown Lister, Esq., B.A.; John Henry Smith, M.A.; James Reader White Bros, Esq., B.A.; Samuel Laing, jun., Esq., LL.D.; John Charles Horsey James, Esq., B.A.; Edward Wagg, Esq.; John Henry Empson, Esq., B.A.; John Gerald Fitz-Maurice, Esq., B.A.; Frank Ramsden, Esq., B.A.; Smith Taylor-Whitehead, Esq., M.A.; George Norsworthy, Esq., M.A.; Henry Norsworthy, Esq., M.A.; Henry William Moore, Esq., B.A.; Thomas Lean Wilkinson, Esq.; Thomas Hanson Lewis, Esq., LL.B.; William Hibberd Brewer, Esq.; David Fenwick Steavenson, Esq., B.A., LL.B.; James John Cooper Wyld, Esq., LL.B., B.C.L.; and George Henry Maxwell Batten, Esq.

MIDDLE TEMPLE.—Robert Nalder Clarke, Esq., B.A.; John Short, Esq., B.A., LL.B., certificate of honour of the first class, and senior exhibitor in the law of real property awarded by the Council of Legal Education; Alfred Allan Douglas, Esq., B.A.; William Ogilvie Law, Esq.; Thomas Ellis, Esq., B.A.; Robert Frederick Boyle, Esq., B.A.; John Victor Douglas de Wet, Esq., B.A., LL.B.; Jacob Cohen Stines, Esq.; Philip Southby, Esq., B.A.; Francis Fleming, Esq.; Edward Spencer Carbery, Esq., D.O.L.; John Robert Thomson, Esq.; Harrison Prince Thomson, Esq.; Henry William Bradford, Esq.; William Stewart Byrth, Esq.; Francis Herbert Westmacott, Esq.; Robert Winning, Esq.; Charles William Roher, Esq.; Hugh Lloyd Roberts, Esq.; and Robert Blair Swinton, Esq.

GRAY'S-INN.—Henry Peat, Esq., B.A.; William Edward Hilliard, Esq.; Michael Madhusūdana Datta, Esq.; and John Gibson, Esq., M.A., F.R.G.S.

RECEIVED.

Costs of Lease and Counterpart A Letter to the Council of the Law Society. By Sigma. 8vo., pp. 24. —Hatton & Son, Chancery-lane.

COURT OF QUEEN'S BENCH.

MICHAELMAS TERM, 30 VICTORIA.—Nov. 15.

This Court will, on Tuesday, the 27th day of November instant, hold sittings, and will proceed in disposing of the cases in the Special Paper, and any other matters then pending; and will also give judgment in cases then standing for judgment.

Saturday, the 22nd day of December, appointed for judgments.

BY THE COURT.

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"Mr. Justice Willes, in *Brigg's case*, referred to Best on Evidence (which he characterised as one of the best books on our laws) as to proof of a negative."—*Dearesly & Bell's Crown Cases*, vol. 1, p. 102.

Sir J. Stuart, V. C. (in *Sidebottom v. Adkins*), in quoting this work, speaks of it as "a very valuable text-book."—*3 Jurist*, N. 8, 632.

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THE JURIST.

LONDON, DECEMBER 1, 1866.

THERE is reason to believe that a project for recasting the law of England will in the next session of Parliament be brought forward, either by the Government, or with the sanction of the Government. Now, though the abridgment and arrangement of the law is a most pressing want, it would be a great misfortune if the undertaking were commenced at the present time, while there is no agreement, among those whose opinions ought to be regarded, as to the nature of the evils which are supposed to be curable by a code or a digest, and as to the proper remedy for them. How vague and inaccurate the views even of thoughtful and experienced men on this subject are, was strikingly shewn by the remarks which, at a recent meeting of the Law Amendment Society, followed Mr. D. Dudley Field's account of the New York code, and principally of the civil code for that State, now completed, but not yet adopted. We were amazed to hear it said by Mr. Lowe, that the civil code for New York is a digest rather than a code, and that it is defective by wanting definitions. Mr. Field's account of the code was detailed and clear, and Mr. Lowe had taken and was still taking an active part in the preparation of the code for India, in which, as he acknowledged, the works of the New York Commissioners have been referred to with great instruction and benefit. Yet nothing can be more certain or obvious than that Mr. Lowe's complaint, that the commissioners have produced a digest and not a code, is wholly unfounded. The work is, as Mr. Field insists, in the strictest sense, a code, and it abounds with definitions. The difficulties of the subject must be great when a professed logician can so lose his way while discussing it.

Even in the statements by the advocates of a code of the evils to be cured and of the benefits to be expected from such a work, we find great inaccuracies and inconsistencies. The New York Commissioners in their final report condescend to quibble on the expression "unwritten law." They say:—

"The question, whether a code is desirable, is simply a question [of choice] between written and unwritten law. That this was ever debatable, is one of the most remarkable facts in the history of jurisprudence. If the law is a thing to be obeyed, it is a thing to be known; and if it is to be known, there can be no better, not to say no other, method of making it known, than of writing and publishing it."

Yet, in the opposite page of the same report, the commissioners say, that they have, in the notes to their code, specified all the alterations of the existing law which they consider proper to be adopted. By the existing law they of course mean law printed and published. And in the introduction to the code, the commissioners, after again insisting on the distinction between written and unwritten law, add this remark:—"All that we now know of law we know from written records." The question, then, whether a code

is desirable, has nothing to do with the choice between written and unwritten law.

After remarking that there is no advantage on the side of judicial law in point of flexibility or capacity for application to new cases, the commissioners say—"If by flexibility be meant susceptibility of progression, then it may be affirmed with confidence that a code, upon the theory on which this is framed, not only adopts itself to the present wants of society better than the existing common law, but that it contains within itself in a greater degree the elements of future progress," and this because amendments are easier when the whole law is present in an accessible and compact form. "In almost every instance where an improvement has been made in the laws, it has come from the Legislature. Had society been left to the discipline of the common law, whether it be called flexible or inflexible, the most cruel and bloody of criminal systems would still have shamed us; feudal tenures, with all their burthensome incidents, would have remained; land would have been inalienable without livery of seisin; and wives would have had only the rights which a barbarous age conceded [to] them."

We need not stop to point out the remarkable historical blunders involved in this sentence. We are only concerned to remark, that, whether the common law be exchanged for a code or not, no material alteration of the law can be made except by legislation; and that, inasmuch as every branch of law is to be found, well arranged and neatly expounded, in some treatise, the Legislature has now the same facilities for considering the bearing of any contemplated alteration on the related heads of common law, which it would have if it were working on a code.

The other evils which the commissioners hope to remedy by means of a code, may be inferred from their enumeration of the benefits expected from it:—

"In the first place, it will enable the lawyer to dispense with a great number of books which now encumber the shelves of his library. In the next place, it will thus save a vast amount of labour now forced upon lawyers and judges in searching through the reports, examining and collecting cases, and drawing inferences from the decisions, and so far facilitate the dispatch of business in the courts. In the third place, it will afford an opportunity for settling, by legislative enactment, many disputed questions which the Courts have never been able to settle. In the fourth place, it will enable the Legislature to effect reforms in different branches of the law which can only be effected by simultaneous and comprehensive legislation. Thus, for example, the closer assimilation of the law of real and personal property, and the changes in the relation of husband and wife as to property, cannot be effected by any other means so wisely and safely as by a general code. The making of a code involves the general revision of the law. It is, indeed, in this way alone that such a revision seems practicable. The occasion is thereby afforded to look at the law of the land as a whole, to lop off its excrescences, reconcile its contradictions, and make it uniform and harmonious. In the fifth place, the publication of a code will diffuse

among the people a more general and accurate knowledge of their rights and duties than can be obtained in any other manner."

To facilitate the occasional amendment of the law; to reduce the bulk of professional libraries; to diminish the labour, or even wholly to abolish the necessity, of consulting precedents; to settle at once many doubtful points; to effect amendments of the law which are only possible while it is being revised as a whole; and to furnish the public with an authentic treatise on the law—these are, in the opinion of the commissioners, the objects for the attainment of which a code is desirable and necessary. It seems to us that they are objects which are all attainable by means of a digest of the existing authorities, including those statutes which cannot be subjected to the process of consolidation, and a code of the remaining statute law. After the expulsion from the reports of those cases which have been overruled, or are obsolete or superfluous^o, the reduction of the residue to brief statements of the material facts and grounds of decision, and the classification of the whole, the lawyer's library, so far as it is concerned with judiciary law, will be moderate in bulk, and easy of access. It will furnish statements of principles and rules, with illustrations of the application of them, and it will do this without the risk or rather certainty of occasional error and incompleteness which is inseparable from a code.

That revision of the whole of the law from which the settlement of doubts and the reform of the defective parts of the law may be expected, is involved in the preparation of a digest of cases and statutes as much as in a codification of the whole, and, indeed, must be completed before the final process of giving to the law the form in which it is, for the time, to be expressed (whether the form be of digest or of code) is commenced. The law must be settled and amended, so far as it is to be settled and amended, before it can be set forth.

The last object stated by the commissioners is that which is most frequently insisted on by popular and shallow declaimers—the casting of the law into a form that shall be intelligible to those who are to obey it as well as to those who are to administer it. But it is obvious that the guarantee of the Legislature is not a necessary or even useful ingredient in the composition of an institutional work. A primer of law, compiled under the direction of the Government and enacted at Westminster, may, like some other primers promulgated by authority, prove to be less attractive and intelligible to the laity than a work of private enterprise, prepared merely as a commercial speculation. But, certainly, a code intended for use in the courts would not be a popular treatise. It is only necessary to compare a chapter of the New York civil code with the corresponding title in Blackstone, to see how essentially different the method of precise, exhaustive, and authoritative statement must be from that of popular exposition; and yet the brevity, sim-

^o It would be sufficient in a digest to set forth a few of many cases deciding the same point, and to state the number of omitted decisions to the same effect.

plicity, and clearness of the terms in which the code is expressed cannot be too highly praised. There is no reason to doubt that the supply of good popular treatises on law is adequate to the demand for them; and if it were not so, the want might be supplied without destroying the foundations of the science.

On the whole, it seems that the only advantages that can rationally be expected from an alteration in the form of the law are—first, the reduction of the volume of the records; secondly, the elimination of erroneous precedents; thirdly, the settlement of many doubtful points; and, fourthly, classification, or the collocation of related subjects. Of these objects, the three last suggest no ground of preference between a digest and a code; for they would be perfectly attainable by either. With respect to the first object, there can be no doubt that a code would be more compact than a digest, in the proportion, let us say, of one to ten. The experience, however, of all code-ridden countries has shewn, that a code is prolific of commentaries and explanatory decisions in a far greater degree than a system of judiciary law; so that the simplicity and compactness of the code can only be preserved at the price of arbitrary discretion in the judge. But it is puerile to suggest that the difference in point of convenience between a library of five volumes and one of fifty ought to have any weight in the discussion. The relative advantages of a digest and a code depend upon other considerations, theoretical and practical. The late Mr. Austin has said almost everything that can be said in favour of a code upon abstract considerations, and we have already given a complete summary of his remarks (9 Jur., N. S., part 2, pp. 331, 339). Mr. C. S. Greaves, Q. C., whose ability and experience bespeak a respectful consideration of everything written by him on the subject, has, in an article, entitled "Legislation," in the *Law Magazine* for May last, taken a more practical view of the subject, arguing against the project of a digest, and in favour of a code. We propose, in a future number, to make some observations on that article, and to draw our illustrations from the civil code for New York.

REGULA GENERALIS.

ORDER OF COURT.—Nov. 22, 1866.

The Right Hon. FREDERICK Baron CHELMSFORD, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Hon. JOHN Lord ROMILLY, Master of the Rolls, the Right Hon. the Vice-Chancellor Sir RICHARD TORIN KINDERSLEY, and the Right Hon. the Vice-Chancellor Sir JOHN STUART, doth hereby, in pursuance of the stat. 15 & 16 Vict. c. 86, and in pursuance and execution of all other powers enabling him in that behalf, order and direct in manner following:—

1. Article 1 of rule 10 of Order 33 of the Consolidated General Orders, and rules 12 and 13 of the same Order, shall be respectively varied, and as varied shall be respectively read as follows:—

Article 1 of rule 10 of Order 33, and rule 12 of the same Order, shall be respectively read as if the words "or set down a motion for a decree or decretal order," were expunged therefrom respectively,

and in lieu of those words, the words "or serve a notice of motion for a decree or decretal order," were inserted therein respectively:

And rule 13 of the same Order shall be read as if the words "unless a motion for a decree or decretal order shall have been set down in the meantime" were expunged therefrom, and in lieu of those words, the words "unless a notice of motion for a decree or decretal order shall have been served in the meantime" were inserted therein.

2. The plaintiff, who has served a notice of motion for a decree or decretal order, shall set down such motion within one week after the expiration of the time allowed to him by rule 7 of Order 33, to file his affidavits in reply, in case the defendant shall have filed any affidavit—or within one week after the expiration of the time allowed to the defendant, by rule 6 of Order 33, to file his affidavits in answer, in case the defendant shall not have filed any affidavit. But in case the time allowed for either of the purposes aforesaid shall be enlarged, then within one week after the expiration of such enlarged time.

3. If the plaintiff shall fail to set down the motion within the time above limited, the defendant may either move to dismiss the bill, with costs, for want of prosecution, or set the motion down at his own request.

4. The Clerk of Records and Writs shall not give a certificate that a motion for a decree or decretal order is in a fit state to be set down until after the expiration of the time allowed to the plaintiff, by rule 7 of Order 33, to file his affidavits in reply, in case the defendant shall have filed any affidavits, or until after the expiration of the time allowed to the defendant, by rule 6 of Order 33, to file his affidavits in answer, in case the defendant shall not have filed any affidavit. But in case the time allowed for either of the purposes aforesaid shall be enlarged, then not until after the expiration of such enlarged time.

5. In all cases in which the time allowed by rules 6 and 7 of Order 33, for filing affidavits in answer or in reply, shall be enlarged, notice thereof shall be given to the Clerk of Records and Writs by production of the order for such enlargement.

CHELMSFORD, C.

ROMILLY, M. R.

RICH'D. T. KINDERSLEY, V. C.

JOHN STUART, V. C.

COVENANT TO SETTLE AFTER-ACQUIRED PROPERTY.

THE distinction is well established, that though a covenant in a marriage settlement by the intended husband, that he will settle all the personal property which shall come to the wife during the coverture, does not extend to property subsequently given to the wife for her separate use, yet if the wife has joined in the covenant, or expressed in any manner an agreement that all her future property shall be settled, then property thereafter given to her for her separate use will be bound. The authorities are stated by Mr. Peachey in his *Treatise on Settlements*, c. 16, where he says, "The result of the authorities seems to be, that property coming to a married woman for her separate use, if it be absolute property, not a mere life interest, is clearly property which vests in, devolves upon, or belongs to her; but that the question whether the parties meant to settle it, must depend upon what they have agreed is to be done, and by whom, in order to designate the property which is intended to be embraced within the covenant." (P. 527). In a recent case (*Re Mainwaring's Settlement*, 2 Law

Rep., Eq., 487) the question arose, whether the operation of an agreement by the wife to settle her future property could be controlled by express words in a subsequent gift of property to her. No doubt existed as to the scope and intent of the covenant in that case. The settlement was made in contemplation of the marriage of Miss Warren with A. Mainwaring, and contained an express assignment by the lady of all the personal estate to which she "then was entitled in possession, reversion, remainder, contingency, or otherwise howsoever, or to which she might at any time thereafter become entitled in way howsoever," and a covenant by the gentleman to settle the lady's future estate. After the marriage, Mrs. Mainwaring's mother, by her will, bequeathed to her a legacy of 2700*l.*, and by a codicil directed that all sums of money which by her will were given to her daughter, Mrs. Mainwaring, should be paid over to the trustees of her marriage settlement, to be held upon the trusts of that settlement, in pursuance of the covenant for that purpose contained in the settlement. By another codicil she authorised her executors before paying over the principal moneys given by her to Mrs. Mainwaring to the trustees of her settlement, to pay such part of the same to the said Mrs. Mainwaring as she might require, "for her separate use, independent of her said husband, and to be free in all respects from his debts, control, and engagements." The question in the case was, whether the testatrix's executor was bound, on Mrs. Mainwaring's request, to pay over to her any part of the legacy. Sir W. P. Wood, V. C., held that he was. His Honor admitted that the assignment of further property contained in the settlement amounted to a contract by the lady to settle property given after the marriage to her for her separate use; and, after referring to the terms of the second codicil, proceeded thus:—"The testatrix, therefore, means to say, 'I do not intend this portion of my daughter's property to be comprised in her settlement; I intend that she shall take it upon the express condition that it shall not be settled.' The question is, whether the Court ought to consider such a gift as this to be comprised in the covenant to settle future property. Now, in the first place, the Court will not hold property as comprised in the covenant which will not fit the trusts of the settlement. On this ground it has been held, that estates for life and annuities are not within the scope of such a covenant. Again, in the case of *Thornton v. Bright* (2 My. & C. 230, 255), although it was not a case of a covenant by an intended wife, what was said by Lord Cottenham is extremely appropriate. The result of his Lordship's reasoning is this:—'You must see what is the nature of the gift; and if you find the gift to be of a nature with which the terms of the covenant itself are not consistent, you do not bring in the covenant, or apply it to property given in that way.' If I am asked to apply the covenant in this instance to this property, I must hold that it does not fall within the scope of this settlement, and that it must be handed over to the wife. I think the argument founded on the words 'free from his debts, control, and engagements,' quite unanswerable. One of the engagements by which the property would, but for this codicil, have been bound, was, that it should be included in the description of after-acquired property, within the meaning of this covenant."

We have extracted all the reasons given by the Vice-Chancellor for his decision. They seem to amount to this, and this only, that the giver of the legacy did not intend that it should be included in the settlement. We may dismiss the reference to the words "free from her husband's engagements," with the remark, that the husband's engagement could not affect his wife's separate estate. The case on behalf of the objects of the

settlement rested on the wife's contract, which, according to all the authorities, extended to her separate estate. The money directed to be paid to her did fit the trusts of the settlement.

It seems, therefore, that the case of *Mainwaring's Settlement* is to be taken as an authority, and the first authority, for the proposition, that a marriage contract to settle after-acquired property does not extend to any property so acquired, and otherwise within the terms of the contract, which the donor directs shall not be so settled. If this doctrine is established, it will be an important exception to the rule, that no one can create an interest in property which shall be free from the incidents which the law attributes to the ownership of such an interest. Separate estate is a creation of equity, by way of exception to the rules, that a married woman cannot dispose of property, and that a husband is entitled to his wife's personal property. We have a further exception, that though a woman may in equity by contract bind her after-acquired separate estate, just as a man may in equity by contract bind his after-acquired property, the contract shall not extend to property given with a declaration that it shall not be so bound. A married woman has engaged that all her separate estate shall be settled. She becomes entitled to separate estate, which she could, if not bound by contract to settle it, dispose of as she pleases. It is because of this ownership, involving an absolute right of disposition, that it is bound by her previous contract. The donor of the property has said that it shall be enjoyed as separate estate, liable to be bound by every contract except that one. If he can dispense with that incident of ownership, why not with any other? Does the principle of the decision depend on the wife's peculiar status of disability, or does it extend to the husband's contracts as well? Would, for instance, a gift to Mrs. Mainwaring of a legacy not for her separate use, but with a declaration that it should not be subject to the fruits of her settlement, have entitled her husband to appropriate it to his own use, instead of performing his covenant to settle all property that should come to him in right of his wife?

COURT OF COMMON PLEAS.—WESTMINSTER, Nov. 26.

(*Sittings in Banco, Michaelmas Term, before Lord Chief Justice Erle, and Justices Willes, Byles, and Keating*).

THE RETIREMENT OF THE LORD CHIEF JUSTICE.

This was the last day of the term, and the announcement which had been made that it was the intention of the Lord Chief Justice to retire from his high office at the end of the term, and that this would not be permitted by the Bar without some public demonstration on their behalf, through the Attorney-General as their acknowledged head, had the effect of causing the court to be densely crowded with members of the Bar at its sitting. Their Lordships took their seats in the ordinary course, the Chief Justice looking even more vigorous and cheerful than usual, and in disposing of the residue of the business of the term, displaying much of that quaint humour and courteous demeanour to the Bar which have so much distinguished and endeared him to all.

At half-past twelve o'clock the business was disposed of, and at one o'clock the Chief Justice and the other learned judges, who had retired, with Mr. Justice Smith, re-entered the court and took their seats.

His Lordship, who was visibly filled with much emotion, having formally asked if there were any more motions before the Court, and there being none,

The Attorney-General and the whole Bar then rose, and

The Attorney-General, addressing Lord Chief Justice Erle, all the members of the Bar remaining standing, said—I rise, my Lord Chief Justice, in the name and behalf of the Bar, to offer you our tribute of respect and veneration on this, the last occasion, as we are given to understand, on which your Lordship will be upon that bench. My Lord, if that tribute were due from considerations arising exclusively in this court, my experience here would not, perhaps, have been enough to justify me in coming forward to give it expression; but, my Lord, it rests on broader considerations—on considerations known to and appreciated by us all; and I could not, therefore, as Attorney-General and leader of the Bar, deny myself the privilege of representing them on this occasion. My Lord, we all feel and desire to acknowledge, that under your presidency in this court, the great judicial duty of reconciling, as far as may be, positive law with moral justice has been satisfied. "The letter of the law that kills," and the mere discretion of the judge, which has been well said to be the law of the tyrant, have been alike kept in proper and due respect. Learning, great experience of affairs, wise administration, have been so combined, that with the assistance of the eminent judges associated with you on that bench, the laws of England have been exhibited in their true aspect as the exponent of the rights and duties of our citizens, and the guardian of their liberties. The Court of Common Pleas, under your presidency, my Lord, has attained the highest confidence of the suitor, the public, and the profession. But, my Lord, I shall not be forgiven by my colleagues if I stop there. I shall not be forgiven if I fail to express our admiration for the simplicity and elevation of character that have adorned that administration, our affectionate regard for the private and social qualities, the kindness, and the courtesy that have been displayed on the bench and in the intercourse of private life. Our homage is due and is paid to the worth of the man and the dignity of the judge. My Lord, it is no idle ceremony that induces us thus to intrude upon you. We know that your Lordship would, had it been possible, have retired from the bench to-day without public observation. But it was not possible. There are occasions on which the impulses of the heart must be obeyed; and this was one when the universal feeling and esteem of the profession ought to be publicly expressed. My Lord, it may be right, and since it is your will, we endeavour to think it is so, that in the full possession of the greatest judicial qualities—in the maturity of your faculties, your Lordship should retire from us, and leave the active duties of ordinary judicial life. They have, no doubt, been incessant and severe—excessively so; but, my Lord, we may be pardoned if we bear in mind that your Lordship is still a member of one of our highest judicial appellate tribunals; and that the law of the country may still for long years to come, so far as may be consistent with your Lordship's ease in retirement, derive the benefit of your great wisdom and experience. My Lord, that in these future years your Lordship may enjoy every consolation and happiness that can surround the maturity and close of a valuable life is the earnest, the ardent prayer of every one of us. My Lord, with this feeble and imperfect expression of our sentiments, I now, addressing you as my Lord Chief Justice of the Common Pleas, and, happily, addressing you in that character only, respectfully say to you in the name and behalf of the Bar—Farewell.

THE LORD CHIEF JUSTICE, who spoke with evident emotion, said—Mr. Attorney, my words in reply must be few. I return my earnest thanks to you and to all

whom you represent on this occasion. I have laboured to do justly according to law, and to obey humbly the Power that gave me a sense of right. If any duty on my own part has been well performed, the honour is mainly due to those who in their respective departments have had to co-operate with me in the noble work of administering justice. It is eminently due to the Bar. I have seen a long succession of advocates, and among them men of the highest worth, espousing and maintaining important interests by their eloquence—always speaking with inflexible integrity, and making the way of duty plain for the judge—men whom I delight to think of with confirmed respect and regard. I have happiness in knowing that the estimation of the Bar is well maintained. I shall ever retain the deepest interest in its honour, for the sake of its members and of the public. Above all, I desire that the due share of honour should be given to my brethren of this Court, with whom I have been taking counsel and interchanging mind for years past, to my unspeakable benefit. I may not in their presence say all that I feel towards them; but I cannot refrain from adding, that their affectionate help has been sunshine on my path down to the last of my judicial life. I now take my leave. Though sensible of manifold defects, I still venture to believe that I have devoted the best of my abilities to the duties of my office, unceasingly to the present time, when I find need for some abatement of work; and your approval seems to sanction the hope that I may not have laboured altogether in vain. The words of approval pronounced by the Attorney-General in this assembly to-day are to me a strong support and reward. I am heartily thankful to you for them. They are intensely endeared to me by the genial kindness of your farewell.

The Chief Justice, accompanied by the other judges, then left the bench, and the overcrowded court was soon deserted.—*Times*.

Court Papers.

EQUITY SITTINGS, AFTER MICHAELMAS TERM, 1866.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Tuesday Dec. 4	First Seal.—Appeal Motions and Appeals.
Wednesday 5	Petitions and Appeals.
Thursday 6	
Friday 7	
Saturday 8	Appeals.
Monday 10	
Tuesday 11	
Wednesday 12	
Thursday 13	Second Seal.—Appeal Motions and Appeals.
Friday 14	
Saturday 15	
Monday 17	Appeals.
Tuesday 18	
Wednesday 19	
Thursday 20	Third Seal.—Appeal Motions and Appeals.
Friday 21	Petitions and Appeals.
Saturday 22	Appeals.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Tuesday Dec. 4	First Seal.—Appeal Motions and Appeals.
Wednesday 5	Appeals.
Thursday 6	

Friday 7	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday 8	
Monday 10	
Tuesday 11	
Wednesday 12	
Thursday 13	Second Seal.—Appeal Motions and Appeals.
Friday 14	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday 15	
Monday 17	
Tuesday 18	
Wednesday 19	
Thursday 20	Third Seal.—Appeal Motions and Appeals.
Friday 21	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday 22	

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Tuesday Dec. 4	First Seal.—Motions and General Paper.
Wednesday 5	
Thursday 6	General Paper.
Friday 7	
Saturday 8	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 10	
Tuesday 11	General Paper.
Wednesday 12	
Thursday 13	Second Seal.—Motions and General Paper.
Friday 14	General Paper.
Saturday 15	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 17	
Tuesday 18	General Paper.
Wednesday 19	
Thursday 20	Third Seal.—Motions and General Paper.
Friday 21	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday 22	General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Lincoln's Inn.

Tuesday Dec. 4	First Seal.—Motions and General Paper.
Wednesday 5	General Paper.
Thursday 6	
Friday 7	Petitions, Adjourned Summonses, and General Paper.
Saturday 8	Short Causes, Adjourned Summonses, and General Paper.
Monday 10	
Tuesday 11	General Paper.
Wednesday 12	
Thursday 13	Second Seal.—Motions, Adjourned Summonses, and General Paper.
Friday 14	Petitions, Adjourned Summonses, and General Paper.
Saturday 15	Short Causes, Adjourned Summonses, and General Paper.
Monday 17	
Tuesday 18	General Paper.
Wednesday 19	

Thursday	20	Third Seal.—Motions, Adjourned Summons, and General Paper.
Friday	21	Petitions, Adjourned Summons, and General Paper.
Saturday	22	Short Causes, Adjourned Summons, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART
At Lincoln's Inn.*

Tuesday	Dec. 4	First Seal.—Motions and Causes.
Wednesday	5	} Causes.
Thursday	6	
Friday	7	Petitions and Causes.
Saturday	8	Short Causes and Causes.
Monday	10	} Causes.
Tuesday	11	
Wednesday	12	} Causes.
Thursday	13	
Friday	14	Petitions and Causes.
Saturday	15	Short Causes and Causes.
Monday	17	} Causes.
Tuesday	18	
Wednesday	19	} Causes.
Thursday	20	
Friday	21	Petitions and remaining Motions.
Saturday	22	Short Causes, remaining Petitions, and remaining Motions.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. Wood.
At Lincoln's Inn.*

Tuesday	Dec. 4	First Seal.—Motions and General Paper.
Wednesday	5	} General Paper.
Thursday	6	
Friday	7	} Petitions, Short Causes, Adjourned Summons, and General Paper.
Saturday	8	
Monday	10	} General Paper.
Tuesday	11	
Wednesday	12	} General Paper.
Thursday	13	
Friday	14	General Paper.
Saturday	15	Petitions, Short Causes, Adjourned Summons, and General Paper.
Monday	17	} General Paper.
Tuesday	18	
Wednesday	19	} General Paper.
Thursday	20	
Friday	21	Petitions, Short Causes, & Adjourned Summons.
Saturday	22	Remaining Petitions.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

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THE JURIST.

LONDON, DECEMBER 8, 1866.

THE maxim, that in construing a will, the intention of the deviser is to be consulted, is as firmly established among the principles of English law as the rule since *Taltarum's case*, that every tenant in tail in possession, unless forbidden by some private act of Parliament, can turn his estate into a fee-simple absolute, or as the maxim from the time of Britton (book 1, c. 5, s. 12, Nich. ed. 1865), that in criminal cases the accused shall have the benefit of any doubt. Thus, in enumerating the exceptions to the doctrine, that the word "heirs" is necessary to create an estate in fee-simple, Sir E. Coke first mentions wills, and quotes the following instances (Co. Litt. 9. b.):—"As, if a man devise twenty acres to another, and that he shall pay to his executors for the same 10*l.*, hereby the devise hath a fee-simple by the intent of the deviser, albeit it be not to the value of the land. So it is if a man devise lands to a man in perpetuum, or to give and to sell, or in feudo simplici, or to him and to his assigns for ever. In these cases a fee-simple doth pass by the intent of the deviser." Sir W. Blackstone (2 Com., c. 23, p. 381) lays down, that a devise must be most favourably expounded to pursue, if possible, the will of the deviser, who, for want of advice or learning, may have omitted the legal or proper phrase. Again: Littleton (sect. 586), while alluding to those cities and boroughs in which, before the Statutes of Wills, a custom to devise existed, lays down as follows:—"In the same manner as it, where a man letteth such tenements devisable to another for life or for years, and deviseth the reversion by his testament to another in fee or in fee-tail, and dieth, and after the tenant commits waste, he to whom the devise was made shall have a writ of waste, although the tenant doth never attorn. And the reason is, for that the will of the deviser made by his testament shall be performed according to the intent of the deviser; and if the effect of this should be upon the attornment of the tenant, then perchance the tenant would never attorn, and then the will of the deviser should never be performed; and for this the devisee shall distrain, or he shall have an action of waste without attornment. For if a man deviseth such tenements to another habendum sibi in perpetuum, and dieth, and the devisee enter, he hath a fee-simple *causa quâ supra*; yet if a deed of feoffment had been made to him by the deviser of the same tenements habendum sibi in perpetuum, and livery of seisin were made upon this, he should have had an estate, but for the term of his own life." The well-known case of *Perrin v. Blake* (4 Burr. 2579 and 1 W. Bl. 672) may at first sight appear an exception. There, A. by his will devised his real and personal estate, equally to be divided between any after-born male child and John his son when the after-born child should attain the age of twenty-one years; and after declaring it to be his intent that none of his children should sell his estate for longer than his life, he declared, that to that intent he

gave all his estate to his said son John and such child for their lives, remainder to trustees to preserve contingent remainder, remainders to the heirs of the bodies of his said sons, with remainders over. There being no after-born male child, the question arose, what interest John took in the real property of the deviser. The majority of the Court of King's Bench held that he took an estate for life only, but in the Exchequer Chamber the rule in *Shelley's case* prevailed, and by a majority it was adjudged that John took an estate tail. An unlearned reader may certainly come to the conclusion that the decision in the Exchequer Chamber set at naught the intent of the deviser; but Mr. Justice Blackstone (4 Burr. 2581), in delivering judgment, "agreed with the majority of the Court of King's Bench, that if the intent of the testator manifestly and certainly appeared (by plain expression or necessary implication from other parts of the will) that the heirs of the body of A. should take by purchase, and not by descent, then a devise to A. for life, and after his decease to the heirs of his body, not only might, but must, be construed an estate in strict settlement; but he thought it did not manifestly and certainly appear from the mere intended restraint of the power of alienation in A., that the testator had meant that the heirs of A.'s body should take by purchase, and not by descent; or even that he knew the difference between the two methods of taking." So that, at least in the opinion of Sir W. Blackstone, the doctrine that the intention of the deviser must be followed, would have governed the decision, if he had used words clearly shewing that he did not use the expression "heirs of the body" in its ordinary legal acceptation. Again: in *Fetherston v. Fetherston* (3 Cl. & Fin. 167) the testator used, in a will dated the 26th April, 1827, the following words:—"I give, devise, and bequeath to my much respected kinsman William Fetherston and his heirs male, according to their seniority in age, and their respectively attaining the age of twenty-one years, all my estates, real and personal, in lands, houses, and tenements, not hereinbefore disposed, the elder son surviving of the said William Fetherston and the heirs male of his body lawfully begotten always to be preferred to the second or younger son; and in case of failure of issue male of the said William surviving him, or their dying unmarried and without lawful issue male attaining the age of twenty-one years, then to Theobald Fetherston, brother of the said William, and his heirs male lawfully begotten, on attaining the age of twenty-one years, the elder to be preferred to the younger; and in case of the death or failure of issue male of the said Theobald lawfully begotten, and their not attaining the age of twenty-one years, then to my right heirs for ever." It is to be observed, that although a gift by deed to a man and his heirs male as an estate in fee-simple, yet a devise to a man and his heirs male "by construction of law is an estate tail, the law supplying the words 'of his body'" (Co. Litt. 27. a.; 2 Bl. Com. 115); and it was not denied that the very first words of the devise, "William Fetherston and his heirs male," appeared to carry an estate tail; but it was contended that they were so instantly followed by

words which explained and qualified them, that no person could doubt that the devise to William Fetherston amounted to no more than a life estate. But the judges who attended the argument were unanimously of opinion that William Fetherston took an estate in tail; and Sir N. C. Tindal, in delivering their opinion, adopted the words of Lord Alvanley, C. J., in *Poole v. Poole* (3 B. & P. 627), and laid down the doctrine, that the first taker shall be held to take an estate tail where the devise to him is followed by a limitation to the heirs of his body, except where the intent of the testator has appeared so plainly to the contrary, that no one could misunderstand it; and it was accordingly adjudged that William Fetherston was tenant in tail, there not being words sufficiently clear to alter the ordinary meaning in a will, of a devise to a man and his heirs male. Here the doctrine, that if the intent be certain, the words "heirs of the body" in a devise may be construed as meaning children, is unequivocally admitted.

Another instance of the anxiety prevailing in the Courts to prevent the total disappointment of a testator's intention is, that the doctrine of cy-pres is allowed to be applied to cases where it would otherwise be defeated by the rule against perpetuities. "This doctrine applies where lands are limited to an unborn person for life, with remainder to his first and other sons successively in tail, in which case, as such limitations are clearly incapable of taking effect in the manner intended (the remainder to the issue being . . . absolutely void), the doctrine in question gives to the parent the estate tail that was designed for the issue, which estate tail (unless barred by the parent or his issue being tenant in tail for the time being) will comprise in its devolution by descent all the persons intended to have been made tenants in tail by purchase. The intention that the testator's bounty shall flow to the issue, is considered as the main and paramount design, to which their mere mode of taking is subordinate, and the latter is therefore sacrificed. The first clear authority for the doctrine is the case of *Nicholl v. Nicholl* (2 W. Bl. 1159), where the devise was to the second son of W. Nicholl (who at the death of the testator had no son) for his life; and after his death, or in case he should inherit the paternal estate by the death of his brother, to his second son lawfully to be begotten, and his heirs male; remainder to the third and other sons of W. Nicholl successively in tail male; remainder over. The Common Pleas, on a case sent from Chancery, certified that the estate would vest in the second son by executory devise; and in order to effectuate the general intention of the testator, he would take an estate in tail male, determinable on the accession of the paternal estate." (1 Jarm. Wills. 278, 3rd ed.) But this doctrine does not apply, either where an attempt is simply made to limit a succession of life estates to the issue of an unborn person either for a definite or indefinite series of generations, or where the limitation to the children of the unborn person gives them an estate in fee-simple.

The case of *Jordan v. Adams* (6 Jur., N. S., part 1, p. 536; 7 Jur., N. S., part 1, p. 5) appears to have created great doubt in the minds of the judges who

heard the argument. The question for the opinion of the Courts was, what estate William Jordan took in certain land under the will of John Jordan, dated the 8th May, 1825? The devise as to this property was to the following effect:—The testator directed his trustees to stand seised thereof, and permit William Jordan to occupy the same, or receive the rents and profits thereof for his own use during his natural life; and after his decease, then to permit and suffer the heirs male of his body to occupy the same, or receive the rents or profits thereof, for their several natural lives in succession, according to their respective seniorities, or in such parts or proportions, manner, and form, and amongst them as the said William Jordan, their father, should, by deed or will duly executed, direct, limit, or appoint; and in default of such issue male of the said William Jordan, then upon trust to and for the use of Richard Jordan and his heirs male, in such parts and proportions, manner and form, as he should by deed or will direct or appoint, but charged with a sum of 2000*l.* for the daughters, if any, of William Jordan; and after the performance of the said trusts, and subject thereto, the said trustees should stand seised of the said land to and for the right heirs of Robert Jordan for ever. The Court of Common Pleas decided that the words "heirs male of the body" must be construed to mean sons, and that William Jordan took an estate for life only. But in the Exchequer Chamber great diversity of opinion arose, Barons Martin and Channell holding that William Jordan took an estate in tail, while Lord Chief Justice Cockburn and Mr. Justice Wightman considered that the judgment of the Common Pleas should be affirmed. The Chief Justice remarked, that three things were relied on as taking the devise out of the ordinary rule of law, that a gift to a man for life, with remainder to the heirs of his body, creates, in point of law, an estate tail in the ancestor; they were—first, that the devise to the heirs was for their natural lives; secondly, that their estate was subject, with reference both to the order of succession and quantity of estate, to the appointment of the ancestor; and, thirdly, that the ancestor was distinctly described as the father of the heirs male of the body, from which it was said to be plain that the words "heirs male of the body" must necessarily be read as "sons." But his Lordship considered that, in construing the will, the two circumstances first mentioned had not the effect contended for; and he based his decision, that the judgment of the Court of Common Pleas ought to be affirmed, on the ground that, by the use of the expression "William Jordan the father," the deviser clearly pointed out, that by the words "heirs male of the body of William Jordan," he meant sons of William Jordan, who, therefore, took an estate for life only. In the case of *Byng v. Byng* (8 Jur., N. S., part 1 p. 1135), wherein the rule in *Wild's case* (6 Rep. 16 a.) was much discussed, the House of Lords decided that the word "children" in a will must, by reason of the context, be read as meaning heirs of the body, and that the devise to a woman and her children was, under the circumstances, to be taken as conferring on her an estate in tail.

In the recent case of *Lloyd v. Jackson* (35 L. J., Q. B., 35), the question for the consideration of the Court of Queen's Bench was, what interest in certain lands Mary Ann Lloyd took under the will of Ebenezer Lloyd, made before the coming into operation of the Wills Act (7 Will. 4 & 1 Vict. c. 26, s. 28), which allows a fee-simple to pass without any words of limitation. The material portions of the will were as follows:—"I, Ebenezer Lloyd, do make and ordain this my last will and testament, that is to say, . . . ; and as touching such worldly estate wherewith it hath pleased God to bless me in this life, I give and bequeath to my well-beloved wife Mary Ann Lloyd, whom I likewise constitute, make, and ordain, my sole executrix of my last will and testament, all and singular my lands, messuages, and tenements, by her freely to be possessed and enjoyed, together with all my houses, household goods, deeds, and moveable effects; all my children to be educated and settled in business according to my wife's discretion; and I hereby utterly disallow, revoke, and disannul all and every other former testaments, wills, legacies, bequests, and executors by me in any way before named, willed, and bequeathed, ratifying and confirming this and no other to be my last will and testament." It was contended, on two grounds, that Mary Ann Lloyd was tenant in fee-simple; first, because the deviser had used the word "estate;" and, secondly, because his intention could not be effectually carried out, unless the will were held to pass the fee-simple. It is well known that even before the Wills Act the word "estate" occurring in a devise gave the fee-simple (2 Jarm. Wills, c. 33, p. 255); and, so far was this doctrine carried, that to that word used in the plural number the same effect was ascribed. (*Roe v. Bacon*, 4 M. & S. 366; *White v. Coram*, 3 Kay & J. 662). But in *Lloyd v. Jackson* the Court seemed inclined to hold that the word "estate" not being brought down into the devising part of the will, was, therefore, insufficient to pass the deviser's whole interest; but the judges of the Court of Queen's Bench considered that the fee-simple did pass on the 'second ground' relied on. Mr. Justice Blackburn remarked as follows:—"The general rule by which a case like this is decided, is to look at the will, and endeavour to collect from it the intention of the testator. The word 'intention' must not of course be understood in its ordinary sense, but must mean an intention expressed in proper words, according to the ordinary rules of law." And Mr. Justice Shree, in delivering judgment, made the following observations:—"But the intention of the testator is made apparent by his direction, and it seems to me of little moment whether this direction is the mere expression of a wish, or creates a trust that his wife should enjoy the real estate in a way consistent with his and her moral duty to their children, not merely to their nurture in childhood, which, in a vast majority of cases, would in no way derogate from the full and free enjoyment of the estate by the widow, but subject to an outlay on their account for their education and settlement in business, which would, probably, be payable out of her income from the estate during her life." And in this curious and very recent case, the doctrine that the intention of the deviser must be followed in expounding a will, was considered as deciding that the devisee should be held to have taken the inheritance.

FORESHORES.

[From the Pall Mall Gazette.]

TO THE EDITOR OF "THE PALL MALL GAZETTE."

SIR,—Your article on this subject tempts me—late as it is now—to address you, because the real interest of the public seems likely to be lost sight of in the unhappy squabble between Mr. Howard and the Scotch dukes.

It might be gathered from the Duke of Argyll's letters, and even from your article, that the only interest of the public is to check an encroaching and powerful department, which, in order to increase its own importance and to make jobs for its friends, sets up unjust claims, attacks defenceless individuals, carries on oppressive lawsuits in an oppressive manner, and, where its rights are admitted, exercises them with utter disregard of the public interests. It is no business of mine to defend Mr. Howard or his office, and there is just enough of truth in some of the charges made to give colour to the attack. I would only recommend any one who desires to be just to read the whole of the papers, and especially the case of *Smith v. The Officers of State in the House of Lords* (6 Bell's App. Cas. 487), given at the end of the Parliamentary Papers, in which the Office of Woods interfered successfully to protect the public of Edinburgh and its neighbourhood from an encroaching proprietor, who sought under a territorial claim to exclude them from their accustomed free use and enjoyment of the seashore. The fact is, that the public has a double interest in the strip of beach between high and low water which is called the "foreshore." In the first place, the public or the Crown (for it is the same thing), when owner of the land, has the same pecuniary interest as any other landowner in making the most of it, and it is not easy to say why they should not do so. Take, for instance, the foreshore of the Mersey. The title to the soil there was in old times granted by the Crown to the corporation of Liverpool and to neighbouring landowners. The magnificent docks of Liverpool have been built upon that foreshore, and the Dock Estate, i. e. the trade of the port, has paid for it to the town of Liverpool and to the great landowners hundreds of thousands of pounds. Suppose that a part of this foreshore still remained in the Crown on behalf of the public. Would it be just that the public should make a present of that part to the Dock Estate, whilst the corporation of Liverpool or the neighbouring peers were making fortunes by selling those parts which had been granted to them? Or, to take another view of the matter, is it likely, if this foreshore had remained vested in the Crown, that the Dock Estate would have been compelled to pay more for it than they have paid to the town of Liverpool and the neighbouring landowners? Those who know the history of the dealings between the town of Liverpool and the Dock Estate will scarcely say so. But this pecuniary interest of the public is a subordinate matter. The amount of revenue to be derived from selling or leasing foreshores is a trifle. A Government department is notoriously a bad manager of property; it lacks motive; it is charged with tyranny if it asserts its claims, with laches if it neglects them. And it is the misfortune of the Woods Office to have been placed in a position in which it was its special, if not its sole, duty to look after these proprietary and pecuniary interests only. Where it stepped beyond this—here, as in the case of the Portobello Sands, it interfered to protect the public enjoyment of the seashore—it was stepping beyond the limits which Parliament had prescribed for it.

The second interest which the public has in the foreshores is a very different and a much more important one. This strip of beach is a sort of open common between land and sea. It is of the utmost value to the public for purposes of passing, walking, bathing, fishing, anchoring, and landing; piers and jetties, quays and promenades, drains, and other works of great utility, have to be made upon it. It affords in some places inexhaustible supplies of materials for roads or building; in others it forms a barrier against the encroachments of the sea, and must itself be protected from injury. These are interests of infinitely greater importance than the pecuniary value of the soil; and with a view to their preservation, it is most desirable that no rights should exist upon the foreshore which would enable the owner of those rights to set the public at defiance; and the real and important question raised by this Scotch dispute is, whether these interests will be as safe if the title to the soil is declared to be vested in the neighbouring landowners, and to be accompanied by the ordinary rights of ownership, as it will be if the ownership and management are vested in a responsible department of the Government. We all know the tendency of lawyers to support rights to property, and to neglect the duties which may have originally attached to those rights; we hear occasionally of semi-feudal claims (e.g. the stopping up of Glen Tilt, which on this side the Tweed are sufficiently astounding to us; and we can hardly be confident that a Scotch magnate, whose title to the foreshore is declared to be as clear and indefeasible as his title to his own park and castle, will invariably so use his legal rights over it as to ensure to his neighbours and to the public the free use and enjoyment of it, to which, if possible, they ought to be entitled. Who can find fault with him if he prefers his own interest or enjoyment when it conflicts with them? If he wishes to build upon the shore, to shut up a common passage, to demand anchorage and groundage, to establish an exclusive fishery, to take, and to monopolise the taking of, sand or gravel, to the detriment of his neighbours, who can blame him? It is his own; let him do as he likes with it. On the other hand, if the title is vested in a department of the Government under a responsible Minister, that department will not dare to neglect the public interest. If it does, it will be hauled over the coals at once. Such a department can and ought to be compelled by legislation, if necessary, to have due regard to the public use and enjoyment, and to make these its chief objects.

In this respect there can be no doubt that it is for the public interest that the Crown should succeed in establishing a legal title to the foreshores, and that the Scotch landowners should not; whether it can do so or not, and if so, in what cases, is a matter which should be determined, if necessary, by fair trial at law, but which should not be prejudiced by statements, that the interest of the Scotch landowners is the interest of the public, or by the false position which the Office of Woods has most unfortunately been compelled to assume. Whether, where there is a real doubt about the title to the soil, the matter might not be arranged by a compromise, reserving to the public on the one hand the free use and enjoyment of the sea-shore, and giving to the frontager on the other such a title as may not be inconsistent with those rights, is a question which may deserve consideration from both parties to this dispute.

PUBLICUS.

Court Papers.

EQUITY CAUSE LISTS, AFTER MICHAEL-
MAS TERM, 1866.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Harries v. Rees (S., Jan. 18)
L. C.
Pearse v. Dobinson (K., Feb. 10)
Homfray v. Fothergill (S., March 2)
Knox v. Gye (W., March 16)
L. C.
Waters v. Earl of Shaftesbury (S., April 13) L. C.
Tate v. Williamson (W., April 14) L. C. Part heard
Kny v. Hargreaves (S., April 17)
Harvey v. Clarke (R., April 17) L. C.
Kendall v. Watson } (S.,
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Gordon v. Gordon (S., April 19)
Fryer v. Davies (R., April 23)
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Johnstone v. Hamilton (S., May 2)
Raphael v. Thames Valley Railway Co. (R., May 5)
L. C.
Pettinger v. Ambler } (R.,
Bunn v. Pettinger } May 7)
L. C.
Forbrook v. Forbrook (S., May 8)
Earl Howe v. Earl of Lichfield (R., May 8) L. C.
Cook v. Glass (S., May 9)
Lewer v. Earl of Shaftesbury (W., May 28) L. C.
Patch v. Ward (S., June 8)
Martin v. Headon (K., June 9)
Thorpe v. Mattinson (S., June 12)
Calcraft v. Thompson (R., June 21) L. C.
Belaney v. Belaney (R., June 22) L. C.
Massey v. Massey (W., June 29)
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Phillips v. Hudson (R., July 10) L. C.
Fielden, Bart., v. Mayor, &c. of Blackburn (W., July 14)
Simmons v. British National Life Assurance Association (S., July 23)
Grady v. Taylor (R., July 23) L. C.

Thornton v. Howe (R., July 24) L. C.
Att.-Gen. v. Mid Kent Railway Co. (S., July 25)
Pilgrim v. Auction Mart Co. (Limited) (W., July 26) L. C.
Osborn v. Duke of Marlborough (S., July 28)
Hynam v. Dunn (W., Aug. 4)
Austin v. Tawney (R., Aug. 9) L. C.
Thurston v. Gausson (R., Aug. 9) L. C.
Snowball v. Wrightson (W., Oct. 5)
Cooper v. Martin (S., Oct. 30)
Watney v. Wells (R., Oct. 31) L. C.
Imperial Gas-light and Coke Co. v. West London Junction Gas Co. (Limited) (S., Nov. 5)
North Stafford Steel, Iron, & Coal Co., Barlham (Limited) v. Lord Camoys (K., Nov. 5)
Cardiff Preserved Coal and Coke Co. (Limited) v. Norton (R., Nov. 6) L. C.
Steward v. Jones (S., Nov. 6)
Baxendale v. McMurray (S., Nov. 6)
Lord Carrington v. Wycombe Railway Co. (S., Nov. 8)
North Hallenbeagle Tin and Copper Mining Co. (Limited) and Companies Act, 1862—Appeal Petition of Richard Knight from the Vice-Warden of the Stannaries
Crump v. Moretonhamstead and South Devon Railway Co. (S., Nov. 12)
Mullins v. Hussey (R., Nov. 24) L. C.
Turner v. Burkhshaw (R., Nov. 27) L. C.
Foster v. Oxenham } (S.,
Foster v. Brown } Nov. 29)
Brown v. Foster }

CAUSES.

Baxendale v. West Midland Railway Co. (M D) L. C.
Baxendale v. Great Western Railway Co. (M D) L. C.
Baily v. Keighly (F C) L. C.

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

- Gellatly v. Smith (M D, Pt. heard)
 Stevens v. Harvey (M D, Pt. heard)
 Read v. Read (M D)
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 Robins v. Edwards (M D)
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 Hodges v. Grant } (F C)
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 Canadian Loan and Investment Co. (Limited) v. Kemp (M D)
 Harris v. Nunn (F C, Summons to vary Certificate)
 Wilkinson v. Wilkinson (F C)
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 Edmonds v. Millett (F C)
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 Honey v. Great Eastern Railway Co. (M D).

Before the Vice-Chancellor Sir JOHN STUART.

CAUSES, &c.

- Downs v. Herne Bay, Hampton, and Reculver Oyster Fishery Co. (Old E)
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 Gedy v. Symons (Cause, Witnesses)
 Affleck, Bart., v. Fortescue (M D)
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 Moore v. Webster (Sp C)
 Mallock v. Still (F C)
 Donaldson v. Gillott (Cause)
 Walter v. Platt (M D)
 Yeeles v. Yeeles (M D)
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 King v. Brown (F C, Sums.)
 Niblett v. Bristol and South Wales Union Railway Co. (M D)

- Whittington v. Green (M D)
 Davies v. Danderwen Slate Co. (Limited) (M D)
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Before the Vice-Chancellor Sir W. P. WOOD.

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Firth v. Fowler (M D)
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 Eastwood v. Lockwood (M D)
 Smedley v. Smedley (Cause)
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 Thomas v. Appleby (Cause)
 Bank of India v. Bell (Cause)
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 Phelps v. Dyke (Sp C)
 Maule v. Eaton (M D)
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 Acorn v. Landed Estates Co. (Limited) (M D)
 Williamson v. Bates (M D)
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 Bank of Hindustan, China, and Japan (Limited) v. Smith (M D)
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 Maynard v. Kerrison, Bart. (C)
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 Eatwell v. Great Eastern Railway Co. (M D)
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A DIGEST OF LAW.

THE Queen has been pleased to appoint the Right Hon. Robert Monsey, Baron Cranworth; the Right Hon. Richard, Baron Westbury; the Right Hon. Sir Hugh McCalmont Cairns, Knt., a Judge of the Court of Appeal in Chancery; the Right Hon. Sir James Plaisted Wilde, Knt., Judge Ordinary of the Court of Probate and Divorce; the Right Hon. Sir Robert Lowe; Sir William Page Wood, Knt., a Vice-Chancellor; Sir George Bowyer, Bart.; Sir Roundell Palmer, Knt.; Sir John Shaw Lefevre, Knight Commander of the Most Honourable Order of the Bath; Sir Thomas Erskine May, Knight Commander of the Most Honourable Order of the Bath; William Thomas Shave Daniel, Esq., one of her Majesty's Counsel; Henry Thring, Esq., and Francis Savage Reilly, Esq., Barristers at Law, to be her Majesty's Commissioners to inquire into the expediency of a Digest of Law, and the best means of accomplishing that object, and of otherwise exhibiting in a compendious and accessible form the law as embodied in judicial decisions.

BOOK RECEIVED.

The Middle Classes and the Borough Franchise. By Henry Warwick Cole, Q. C. 8vo., pp. 86.—Longman.

[An able and suggestive pamphlet, but not within our scope. Mr. Cole advocates a division of the electors of each of the boroughs returning two members into two classes, according to the amount of their payment for rates and taxes, and the giving to each class the exclusive right to return one representative.]

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Before the Vice-Chancellor Sir RICHARD MALINS.

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THE JURIST.

LONDON, DECEMBER 15, 1866.

THE LAW OF LIBEL.—FREEDOM OF DISCUSSION.

THE recent case of *Hunter v. Sharpe* has such an important bearing upon the question of the right of public discussion, both as to its extent and its limitation, that it well deserves notice. In a country like this, in which freedom of discussion, on all public matters, is as the air we breathe, nothing can be of greater importance than the extent of the right, and the nature of its limitation, that is, of course, with reference to liability for defamation. Short of what is defamatory, of course, the right is absolute, and requires no limitation, because it involves no injury. The necessity for limitation arises only in cases of injury to private character arising from the publication of defamatory matter. There is here an apparent conflict between private interests and public right; and where there is such a conflict, it must give rise to difficulty. The difficulty, however, disappears when it is borne clearly in mind that the exercise of the public right can refuse no protection beyond what is necessary for its exercise; that is fairly and reasonably necessary. And *within* that limit it will be found very difficult to put a case of any real injury to private character which can be brought within the legal definition of libel. It must never be lost sight of, that *malice* is an essential ingredient of libel. It is a complete mistake to suppose that defamatory matter is necessarily actionable, and that mistake has been the origin of all the fallacies on the subject of the legal liability for defamation in the course of public discussion. It is necessary that a libel should be *malicious* to be actionable. Ordinarily, no doubt, the publication of defamatory matter implies malice, because malice in a legal sense does not mean necessarily personal spite, but merely any improper motive; as a desire to inflict injury upon another, which the law ordinarily implies from the publication of matter which *must* inflict injury; that is, the law implies it ordinarily, because, ordinarily, there is no other reason or motive that can be suggested for the publication. But when there is another motive or cause for it, as when it is in the performance of a duty, or exercise of a right, public or private, then the implication of malice does not arise, and, consequently, either there is no libel, or the law excuses its publication, unless malice is shewn from any circumstances, as, excess, or the like. The exercise of the right of public discussion is one of the reasons which *prima facie* negatives malice, and excuses the publication of defamatory matter, provided it *prima facie* comes within the *necessary* exercise of that right which refuses some *public* right of discussion of *public* interest, and refuses also some *relevancy* in the topics discussed, and some degree of care, temper, and moderation, so as not upon the face of it to shew that recklessness which is always in law malicious. Provided that all these conditions are satisfied

on the face of the libel, then *prima facie* it is excused. And for the same reason, it is manifest that there can be little, if any, injury, to the individual; certainly none which could be brought within the legal definition of a malicious libel. The matter must already have become *public*, or the rule does not apply. It must be in its nature a public matter, relating to a man's public conduct and character, or to what bears upon it, or to public acts or conduct of his, or public proceedings relating thereto. And upon such matters it is manifest that all men will draw their inferences and form their opinions quite apart from the public discussion of it; and the right of public discussion is, in fact, but the expression or expansion of the right of private discussion. For it must never be forgotten that a public writer has no peculiar *exclusive* privilege: as such, he only has a right to that same protection for *his* publication which any private person has for his private conversation or correspondence. And as it would be monstrous to make a private person answerable for a libel, because, in a private letter or conversation, he declared his belief that a minister was unscrupulous, or that a person who had been acquitted was guilty, or that a certain public character was an imposter; so it would be equally monstrous to make a public writer, commenting upon the *same* matters, answerable for libel, because he expressed similar opinions. We are assuming that in either case facts are not invented or fabricated; but that public facts or matters which have been made public *as* facts, are freely commented upon, and inferences drawn therefrom: a man's public acts or conduct; his publications; proceedings against him in public courts, and the like. It is essential that the *matters commented* upon should be public in their nature.

And, in the next place, it is to be kept in mind that there is no protection beyond what is necessary to the exercise of the right of free discussion. They necessarily require some latitude, some allowance for errors, for mistaken reference, &c., but all this comes within the definition of reasonable care. On the one hand, a man is always bound to exercise *some* degree of care, temper, and moderation when writing on the conduct and character of others; and, on the other hand, if he only wrote what he could prove to be true, he would require no protection. It is to be assumed that he falls into error, and publishes defamatory matter which he cannot *justify*. Then comes the necessity for *excuse*, and he is *excused*, only, if he has fallen into error in commenting upon public matters, and *naturally*, unadvisedly, or only erroneously, has gone beyond the limits of legal proof or actual truth. For it is manifest the law never excuses reckless wholesale libel. And, then again, as the protection is taken away by proof of actual malice, which is implied in recklessness, so the use of any intemperate expressions, violent invective, mere words of abuse—rascal, scoundrel, or the like—will always be evidence of that recklessness which, in law, is malice.

And further, the time and occasion chosen for the publication may be evidence of malice, as shewing an evident *desire to injure*; which is never excused. Thus it is, if the publication is pending some legal proceed-

ings against the party implicated, who will be *prejudiced* by the publication. No legal right or principle ever is allowed to conflict with another. The right of free discussion, sacred as it is, is not so much so as the right of a fair trial and an unprejudiced and undisturbed administration of justice. It never, therefore, can be lawful to publish matters calculated to prejudice a man's fair trial on a criminal charge. Hence it has so often been held that the publication of *ex parte* proceedings is not excusable. Hence, also, the press usually abstain from discussing the guilt of a party accused, although there have been lately some scandalous departures from this most sacred rule. And we have had occasion especially to comment upon the conduct of parties, who for months, avowing an intention to prosecute Mr. Eyre for murder, have been sedulously putting forth statements calculated to inflame and prejudice the public mind against him, and prevent him from having a fair trial. The most eminent men in Parliament, such as Sir Hugh Cairns and Sir Roundell Palmer, protested against this, but in vain; and men in Parliament were even found capable of making long speeches against the accused person, declaring that his conduct had "covered him with infamy," and the like. Nay, a member of the legal profession—a member of the *committee for his prosecution*—was not ashamed to deliver an elaborate oration, in which all the cases on the subject were misrepresented and distorted, with a view to shew that he ought to be convicted. This was going infinitely beyond what the Court of King's Bench censured and punished in the person of Sir Francis Burdett; and it was taking a most unfair advantage of the protection thrown around speeches in Parliament. Out of Parliament there can be no doubt such publications are libellous, and in a very high degree reprehensible and punishable. Within the limitations which the law however thus lays down, there can be little danger to *private* character in the fair and free exercise of the right of public discussion. And it is obvious, that when a matter has *already* become public, it is only proper that the remedy for any injury done in public discussion should be by the same medium, and not by means of a prosecution or an action.

Yet it is curious to observe how long the above principles were in being firmly and clearly established, and it was not until the last few years that, simple and plain as they are, they have become thoroughly defined and acknowledged. There was for a long time a notion among narrow-minded judges, that a man, to be protected, must have some *personal* interest in the matter—some personal right or duty; and that (as some judges put it) there "never could be privilege for a volunteer;" a view which of course left a public writer defenceless, for of course he never had any personal concern in the matter discussed, and his strong point was, that he had *not*. This narrow-minded view, however, by degrees was abandoned, and perhaps had its death blow in *Harrison v. Bush* (5 El. & Bl. 344). For there the party had no *personal* interest, nor any personal right; he had but merely the general right and interest which every subject had

in the character and conduct of the magistracy. Then came *Paris v. Levy* (2 Fost. & F. 71; 30 L. J., C. P., 11), in which a public writer was held excused, in the absence of malice, for commenting upon a published placard of the plaintiff, and drawing therefrom the inference, that it tended to tempt servants to dishonesty. Then came the case of *Turnbull v. Bird* (2 Fost. & F. 523), in which Erle, C. J., undoubtedly laid the rule down in too lax a manner; for he told the jury, "that the matter being public in its nature" (the conduct of a man in his public employment), the libel was excused if the *writer honestly believed it to be true*. There was a double error here, for there was no public matter from which the writer could have drawn any inference of that probability of the crime which he imputed, except the religion of the plaintiff; so that the ruling came to this—that libel was excused by bigotry, and that a wrongheaded man, who had worked himself up into the belief that Jews or Romanists or Swedenborgians were necessarily scoundrels, might say that the plaintiff, being a Jew, a Romanist, or a Swedenborgian, was capable of any amount of villany. Of course such a monstrous ruling could never be upheld, and therefore, when brought before the Court in the subsequent case of *Campbell v. Spottiswoode* (32 L. J., Q. B., 108), it was denied. In that case, however, in which the point taken was, that honesty *alone* excused, though all that was judicially *decided* was, that it did *not*; some expressions of the Court were thought to imply that public writers, in the exercise of their vocation in commenting on public matters, had no protection. That was not the effect of the decision; and if there were any obscurities in the judgment, which seemed to imply, that under no circumstances could a public writer be excused in drawing inferences from facts of a public nature unfavourable to a man's motives or character, those doubts have been abundantly cleared up, and the true doctrine luminously laid down in the recent case of *Hunter v. Sharpe*.

In that case, on the one hand, the right of the public writer to this protection, within the limits of a fair exercise of that right, are broadly declared; and, on the other hand, the *limitation* of that right, arising from obvious dictates of justice and moderation, are equally laid down. The substance of that case was, that the plaintiff, a medical practitioner, had put forth a series of publications calculated to attract patients; and that the public writer, *pending a criminal charge against him*, put forth an article to the effect that his publications savoured of quackery, imposture, and charlatanism; and that his conduct in advertising himself as "M.D." resembled that of scoundrels who pass had coin. Now, here, the publication of the article at the *particular time chosen* could not be excused, and so, in effect, the Lord Chief Justice and the jury appeared to think, for the jury, in accordance with the summing up, found a verdict for the plaintiff. But, on the other hand, as the effect of the direction in substance was, that, with the *exception* of that circumstance, and perhaps a single expression, the article might be deemed to come fairly within the protection attached to free discussion, the verdict was

for nominal damages. The general opinion of the press appears to be that the verdict satisfied the justice of the case, and we are of the same opinion.

The chief value of the case, however, lay in the clear and lucid exposition of the Lord Chief Justice of the protection afforded by the law to the exercise of the right of public discussion. It is the peculiar gift of Sir Alexander Cockburn, the faculty of lucid exposition and application of legal principles; and on the present occasion that faculty was admirably exercised. He said, in his summing up, "You must say, upon the whole, whether you consider the plea of justification to be made out; but suppose that you cannot go that length, that will not conclude the case; it will only bring the defendant to his second ground of defence, which, in that event, you must consider. Under that head of defence he says that it was a matter of public interest; that the plaintiff, by public advertisement, invited the public to adopt his system of treatment; and that if he, the defendant, really believed it to be a delusion, he had a right to maintain that it was so; and that even if, in drawing inferences of imposture and bad intention, he fell into error, yet if he wrote honestly, and with *reasonable moderation and fairness*, he is entitled to the verdict; and I entirely adopt that view. Here is a man challenging public criticism by bringing forward what he professes to be a new and valuable system of treatment, and inviting the public to adopt it as the only real remedy; and if a public writer, using a reasonable degree of temper and moderation, as it behoves any one to do who makes injurious imputations upon another—if a public writer, thus discussing the subject in the exercise of his vocation, falls into *error* as to the facts or the inferences, and goes beyond the limits of strict truth, he is nevertheless excused. The occasion is privileged, and if the privilege is exercised honestly, faithfully, and with reasonable regard to truth and justice, then, though he may exceed the limits of what he can reasonably prove to be the truth, he is protected from legal liability."

The Lord Chief Justice went carefully into the nature of the plaintiff's publications with a view to see if they contained matter whence a public writer might not unreasonably draw such inferences, and left that question to the jury; and then, in the event of their thinking that they were of such a character, then, though they might, for the reasons above stated, be obliged to give him a verdict, they might give nominal damages, as they did.

Review.

The Law and Practice in Bankruptcy; with an Appendix of Statutes, Orders, and Forms, partly founded on the Eleventh Edition of Mr. Archbold's Treatise. By WILLIAM DOWNES GRIFFITHS, Esq. (her Majesty's Attorney-General, Cape Town), assisted by CHARLES ARBUTHNOT HOLMES, Esq., Barrister-at-Law. In 2 vols., royal 8vo., pp. 1631.

[Sweet, and Stevens & Sons.]

THIS is the first good and complete treatise on bankruptcy that has appeared since the last edition

of Lord Henley's work, modestly intitled "A Digest of the Bankrupt Laws." Many books purporting to exhaust the subject have appeared, but they have been very indifferently executed, and, for the most part, the compilers of them appear to have been incited to the task rather by want of employment than by fulness of matter. Mr. Griffiths's elaborate Annotations on the Bankruptcy Act of 1861, published in 1862, shewed that he was then thoroughly familiar with the law and practice of bankruptcy; and the contents of the work now before us amply corroborate his prefatory statement, that it is the fruit of many years' labour. Considering the extent and complication of the subject, we are not disposed to complain that this labour appears to have been wholly bestowed upon the substance and arrangement of the work, and that the writer has paid little attention to the graces of composition.

With respect to his obligations to Mr. Archbold's work, Mr. Griffiths says, "The ground plan is in many respects different from that of Mr. Archbold's book. The basis of statute law has been largely altered by subsequent legislation; no proposition of law has been adopted by me from that work without close examination; and, in fact, the chief use made of it has been to supply materials for some passages, which I have carefully digested and rearranged."

The subject is treated of under the following heads:—1. Machinery for the administration of the law in bankruptcy. 2. Who may be bankrupt. 3. Acts of bankruptcy. 4. Petitioning creditor's debt. 5. Procedure to obtain adjudication. 6. Adjudication and consequent procedure. 7. Vesting of assets in the assignee. 8. Property passing by bankruptcy. 9. Discovery, protection, and realisation of assets. 10. Proof of debt. 11. Audit and dividend. 12. Practice on interlocutory applications. 13. Annuling adjudication. 14. Appeals. 15. Assignees. 16. Creditors; their rights, powers, and privileges; meetings of creditors. 17. The bankrupt. 18. Order of discharge. 19. Adjudication against traders in India and elsewhere. 20. Arrangements with creditors. 21. Costs, evidence, crimes, penalties, enforcing orders, notices, &c. An Appendix contains the statutes, general orders, county court bankruptcy orders, and forms.

We have examined with some care the chapters on "the property passing by bankruptcy," and on "the proof of debts," which occupy the larger moiety of the first volume, and we find them to be exhaustive and masterly treatises on those divisions of bankruptcy law, at once the most important, and the least liable to be affected by new enactments.

CHARGE UPON LAND.—REGISTRATION WITH INDEFEASIBLE TITLE.

THE act to facilitate the proof of title to, and the conveyance of, real estates (25 & 26 Vict. c. 53), provides for the registration of a title to land as indefeasible. It (sect. 14) directs the registrar, when the right to such registration has been established, and the time for making objections has elapsed, to enter on the register of estates with an indefeasible title a description of the estate, with a reference to "the record of title to lands on the registry," in which shall be entered "an exact record of the existing estates, powers, and interests in the lands so registered;" and to enter on "the register of mortgages and incumbrances" an "account of all the charges and incumbrances affecting the land, or any part thereof, or the estate or interest therein of any person named in the record of title." And it declares (sect. 20) that, subject

to any exception, qualification, or condition mentioned in such record of title, and to any right or interest thereby reserved, and to any registered charges or incumbrances, and to such charges and interests as are herein declared not to be incumbrances" (viz. land tax, succession duty, tithe rent-charges, rents payable to the Crown, public rights of way, liability to repair highways by reason of tenure, rights of way, water-courses, and rights of water and other easements or servitudes, rights of common, manorial rights and franchises, and leases or agreements for leases under twenty-one years, under which there is actual occupation), the registered owners shall, "for the purpose of any sale, mortgage, or contract for valuable consideration, be and be deemed to be absolutely and indefeasibly possessed of and entitled to such estates, rights, powers, and interests as shall be defined and expressed in such record against all persons, and free from all rights, interests, claims, and demands whatsoever."

Sect. 29 provides, that "if land registered or proposed to be registered, or any part thereof, be subject or be agreed to be made subject to any condition, as, for example, that it shall not be built upon or used in a particular manner, or any other legal condition, notice thereof shall be entered on the record of title, and any transfer, demise, or charge of such land shall be subject to such condition; but it shall be lawful for the Court of Chancery to discharge, alter, or modify any such condition, upon hearing all parties who may be entitled to claim under or against the same."

By the definition clause, "incumbrance" is explained to mean "any legal or equitable mortgage in fee or for any less estate; and also any money secured or charged on land by a trust, or by judgment, decree, or order of any superior court of law or equity; and also any legacy, portion, lien, or other charges, whereby a gross sum is secured to be paid; and also any annual or periodical charge, which by the instrument creating the same is made repurchasable on payment of a gross sum of money; and also any arrear remaining unpaid of any annual or periodical charge, for payment of which arrear a sale of any land charged therewith might be decreed by a court of equity." The definition does not include burthens not pecuniary, nor periodical charges which are not by the instrument creating them made repurchasable for a gross sum of money; yet, by the 27th section, it is expressly provided that land tax, tithe rent-charges, Crown rents, easements, rights of common, short leases, &c., shall not be deemed to be incumbrances, within the act; and in no part of the act is any use made of the word "incumbrance," as defined; but the expressions "mortgages and incumbrances," "charges," "incumbrances," and "charges and incumbrances," are used indiscriminately.

The use of the word "condition" in the 29th section is equally slovenly and inaccurate; for the example ("that it shall not be built upon") shews that what is meant is not a condition, properly so called (i. e. a provision for avoiding the estate), but a covenant binding the owner of the land.

On a registration with indefeasible title, then, all estates, powers, interests, mortgages, charges, incumbrances, and conditions, affecting the land, are to be entered on the register; and even such charges and liabilities as by sect. 27 are declared not to be incumbrances, are, if they appear in the course of proceeding prior to registration, to be noticed on the register, though they will not be defeated if they are not noticed. "Subject to any exception, qualification, or condition mentioned in the record of title, and to any right or interest thereby reserved, and to any registered charges or incumbrances, and to such charges

and interests (if any) as are herein declared not to be incumbrances," the registered owner is to be deemed to have a title "free from all rights, interests, claims, and demands whatsoever." In the case of *Re Drew's Estate* (12 Jur., N. S., part 1, p. 425; 2 Law Rep., Eq., 206) the question arose, whether a covenant contained in a conveyance to a purchaser of part of an estate, with a right of way over a private road retained by the vendor, that the costs of repairing the road should be borne in specified proportions by, and be a charge in equity at law upon, the owner for the time being of the lands sold and the lands retained by the vendor, would bind a purchaser after registration with indefeasible title, if it was not entered on the register. It cannot, however, be said that this question was considered, for, upon an application on the part of one interested in the covenant to have it entered on the register of title of the other party, the Master of the Rolls decided that the entry ought not to be made. "It is not," said his Lordship, "a covenant running with the land; still less is it a charge upon the land; it is simply a personal undertaking on the part of the persons who were parties to the deed, that the owners for the time being of the respective lands shall have the same rights and obligations as the parties themselves then had. The deed was not executed by any one but those two persons. In case of any breach of the proviso, the remedy would be, not against the land, but against the covenantor. I am of opinion, therefore, that the registrar was right in refusing the application." The covenant was, that the costs of the repairs should be a charge upon the owners for the time being of the respective lands, and this was clearly a covenant which would in equity bind every person taking the land with notice of it. Whether it was a covenant which would bind an assignee at law, or an assignee in equity without notice, is a question which it is scarcely necessary to discuss for the present purpose; but certainly the distinction between a covenant not to build (*Western v. Macdermot*, 1 Law Rep., Eq., 499) and a covenant to repair and pay the costs of repairing, is not so clear as to justify the Court in deciding, even on that ground, against a claim which is merely to have a notice of the covenant entered on the record of title, with such effect as it may have.

The result of the decision, if it can be supported, is, that all covenants and engagements relating to land which are binding in equity on purchasers with notice may be discharged, so far as regards that obligation, by registration under Lord Westbury's Act.

A VENDOR'S OBLIGATION TO FURNISH COPIES OF PLANS.

ABSTRACTS of title are frequently delivered without any copies of the plans which are referred to in the abstracted documents, and compliance with a requisition to have the abstract completed by the addition of such plans, at the vendor's expense, is frequently resisted on the authority of a passage in the treatise of Lord St. Leonards, and the case of *Blackburn v. Smith* (2 Exch. 783) there cited. His Lordship says—

"The abstract may refer to a map or plan annexed to any of the deeds for the purpose of identification. A map or plan is clearly not a necessary part of an abstract."

In *Blackburn v. Smith* the plaintiff had entered into a written contract to purchase a piece of land from the defendant, who was to furnish the plaintiff with a full and sufficient abstract of title to the land; and it

was provided that all objections to, and requisitions in support of, the title not delivered by the purchaser within one month after delivery of the abstract, should be deemed to be waived. The abstract delivered by the vendor did not shew a sixty years' title, and it shewed that the legal estate was outstanding. It did not contain copies of plans, which were drawn on certain abstracted deeds. The purchaser did not make any requisition within a month after the delivery of the abstract. The trustee having subsequently died, and no title being deduced from him, it was held that the purchaser could not rescind the contract and recover back his deposit. During the argument, Parke, B., said, "The term 'full and sufficient abstract of title' cannot mean 'a full and sufficient marketable title,' otherwise there would be no reason for the stipulation requiring all objections to be delivered within the month;" and Platt, B., said that the condition meant that the purchaser must object to an *objectionable title* within the time, or else be precluded from objecting; and the case was finally decided on the distinction that the vendor does his part if he delivers a sufficient abstract of such title as he has, whether it is good or bad, and the purchaser must accept the title so abstracted, if he does not object within the time. In delivering the judgment of the Court, Parke, B., said—"With respect to the identity of the land, we think that the abstract referring to a map or plan in one of the deeds abstracted affords sufficient means of identification. We are not aware that a map or plan is ever deemed to be necessary as part of an abstract."

This is not a very strong authority for the proposition in the Treatise on Vendors—a proposition so manifestly absurd that it would require, not one merely but, a series of direct decisions, confirmed by the highest Court of Appeal, to establish it. Mr. Preston, in his Treatise on Abstracts, says, that it is the duty of the solicitor for the vendor to prepare an abstract of the title, and of the purchaser's solicitors to see that it contains "a correct and faithful statement of all circumstances disclosed by the deeds, wills, &c., or depending on extraneous facts, as marriages, burials, and baptisms, possession, descents, disseisins, and the like, and which are material to the title." The abstract is to contain a statement of all the matters disclosed by the documents which are material to be considered in advising on the title. The descriptions of the property set forth in the deeds relating to it are material and essential, and are always transcribed in full, or copied, if they are expressed in words. The same transcription or copying is equally essential if the description is set forth in a plan; and the notion that a vendor is not bound to copy every plan on his abstract may be dismissed as unquestionably erroneous and untenable.

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THE fourth part of the Companies Act, 1862, has been subjected to a severe test; owing to the financial crisis which occurred not long ago, very many public companies have become insolvent, and have been wound up either by or subject to the supervision of the Court of Chancery. It has been pointed out in a preceding leading article of this journal (ante, p. 279), that the Companies Act, 1862, apparently fails to give to the companies registered thereunder any power of contracting beyond those allowed by the common law; and until recently great doubts might have been felt as to the position of the holders of fully paid-up shares in a limited company. But two decisions before the Lords Justices have been very useful in ascertaining what are the rights of such shareholders. In *Re The Anglesea Colliery Company (Limited)* (12 Jur., N. S., part 1, p. 696), a company had been formed for the purpose of buying and working a colliery; the vendors received, as part payment, a certain number of paid-up shares; the shares were each 5*l.*, and on those issued to the ordinary shareholders 4*l.* had been paid. The company was in course of being wound up voluntarily, and after payment of all the debts of the company there remained a small surplus in the hands of the liquidators, who then made a call of 1*l.* on those shares, which were not fully paid up, for the purpose of adjusting the rights of the contributories among themselves. Sir W. P. Wood, V. C., having decided that the liquidators had power to make the call, the case came before the Court of Appeal in Chancery. The Lords Justices affirmed the decision; they reviewed the sections of the Companies Act, 1862, applying to the question, and after observing that the power to make calls is limited in the case of a voluntary winding up to the purposes of paying debts and costs, and adjusting the rights of contributories among themselves, pointed out that the question depended primarily on sects. 38 and 74. The latter enacts, that the term "contributory" shall mean every person liable to contribute to the assets of a company under the act in the event of the same being wound up; it therefore refers to a liability under the act, and leaves to be inferred, from the other parts of the act, upon whom the liability is intended to fall. Sir G. J. Turner, L. J., remarked that nothing could be found describing the persons who were to be liable, except sect. 38, and that this section declared that every present and past member of a company that is being wound up should be liable to contribute to the assets of the company, subject, however, to certain qualifications; amongst which, one provides, that in case of a limited company, no contribution shall be required from any member exceeding the amount unpaid on his shares. But his Lordship considered, that notwithstanding this qualification, all the members must be taken to be contributories, within the meaning of the act; and that, since the holders of paid-up shares were members of the company, they were also

contributories. Again: in *Re The National Savings Bank Association (Limited)* (12 Jur., N. S., part 1, p. 697), an order had been made by the Master of the Rolls for winding up the company upon the petition of a holder of fully paid-up shares. By the Companies Act, 1862, sect. 82, any application to the Court of Chancery for the winding up of a company is to be made by petition, which may be presented by the company, or a creditor or a contributory; and it was contended, that the holder of paid-up shares was not a contributory, within the meaning of the statute. In the course of the argument, the cases of *Re The Patent Artificial Stone Company* (11 Jur., N. S., part 1, p. 4) and *Re The Lancashire Brick and Tile Company* (Id. 405) were cited; in each of these the Master of the Rolls had decided, that the holder of fully paid-up shares in a limited company must shew special circumstances to entitle him to an order for winding up the company. The case of *Re The British and Foreign Cork Company* (11 Jur., N. S., part 1, p. 941) was also mentioned, in which Sir R. T. Kindersley, V. C., had expressly held, that the holders of fully paid-up shares in a limited liability company are not, in the absence of any circumstances importing any fraud, liable to be placed on the list of contributories, although no money has been actually paid in respect of the shares. The judgment of Sir G. J. Turner, L. J., in *Re The National Savings Bank Association*, is to the same effect as that delivered by him in *Re The Anglesea Colliery Company*. His Lordship was of opinion that no doubt could be entertained, that contributories were past and present members of a company that was being wound up. He remarked, "It is said that the introductory part of sect. 38 (of the Companies Act, 1862) is subject to some qualifications, and, amongst others, to that contained in part 4 of the same section; and thereupon, it is said, that no contribution could be called for from the holder of the fully paid-up shares. But this qualification does not seem to prevent its being imported into sect. 74. I think, therefore, that upon the true construction of the act and of the particular clauses in question, there is enough in sect. 38, taken in connexion with sect. 74, to make all present and past members of the company contributories, within the meaning of sect. 74." Their Lordships, therefore, held that the holder of paid-up shares in a limited company was a contributory, within the meaning of that word as used in sect. 74, and that he was entitled to present the petition.

The soundness of the decisions in these two cases cannot be questioned; but it is to be observed, that the Legislature was scarcely fortunate in the choice of its language; the word "contributory," not unnaturally, has given occasion to the doubts, which have been removed by the decisions. Surely, some word more appropriate might have been chosen.

A case still more important than either *Re The Anglesea Colliery Company (Limited)*, or *Re The National Savings Bank Association (Limited)* has been decided before the Lord Chancellor and Lords Justices; this is *Re Overend, Gurney, & Company (Limited)* (12 Jur., N. S., part 1, p. 718), and goes far towards ascertaining the exact position and liability of those who

are at once creditors and shareholders of a company that is being wound up. A person named Grissell was a holder of shares only partly paid up in Overend, Gurney, & Co. (Limited), which was being wound up under the supervision of the Court of Chancery; he was also creditor of the company to a large amount. A call having been made on the shareholders to liquidate the liabilities of the company, Mr. Grissell made an application to Sir R. T. Kindersley, V. C., that the liquidators might be ordered to pay to him a dividend upon the balance of the debt owing to him by the company, after deducting the amount of the call. This application was dismissed by his Honor, and Mr. Grissell then applied that the liquidators might be ordered to pay to him a dividend upon the entire debt due from the company upon the balance of the debt owing to him by the company, after deducting the amount of the call. His Honor refused this application as well as the former. Mr. Grissell appealed, and the matter was heard before the full Court. It was argued, in support of the view taken by Sir R. T. Kindersley, that creditors of the company ought to be able to ascertain from the register of members that responsible shareholders are liable for the amounts unpaid, and that if shareholders who were also creditors were allowed to set off against calls made upon them the amount of debts due to them from the company, the security of those who give trust to a company would be destroyed. The judgment of the full Court of Appeal was delivered by the Lord Chancellor. After stating the facts of the case, his Lordship proceeded to observe that their decision must depend entirely upon the meaning of the Companies Act, 1862, and that the law applicable to partnerships was out of the question. The first question to be determined was, whether the member of a company who was also a creditor was entitled to be paid his debts *pari passu* with the other creditors who were not members of the company, or only after all the debts due to those other creditors had all been paid. This was satisfactorily answered by the fact that the Companies Act, 1862, makes no distinction between a creditor who is, and a creditor who is not, a member of the company; and consequently Mr. Grissell was entitled to be paid *pari passu* with those creditors who were not shareholders. Then arose the further question—how were the calls made upon those shareholders who likewise were creditors to be dealt with? It was held by Lord Chelmsford that they cannot be required to pay up the full amount remaining unpaid on their shares. Under sect. 75, until a call be made there is nothing more than a liability to contribute. This, indeed, creates a debt, but the debt does not accrue due until a call be made. And if the whole of the amount unpaid were required to be paid up, more might be raised than would be requisite for these purposes; and it might be that a contributory thus paying in advance might lose all that he had so paid in the event of any of his co-contributors becoming insolvent. It further remained to be determined whether a shareholder who is also a creditor ought, before receiving payment of any dividend, to pay up any calls that may have been made upon his shares, or whether he is entitled to deduct the

amount of calls which may have been made, but not paid by him, from the debt which is due to him, and to receive a dividend upon the balance. Their Lordships were of opinion that it was quite clear that the amount of calls not paid could not be set off against the debt. The act created a new scheme for the payment of the debts of an insolvent company instead of the old course of issuing execution against the individual members. It will be recollected, that to obtain payment of a judgment debt from a corporation, a creditor was obliged to proceed by writ of *scire facias* (2 Chit. Arch. Prac., pp. 1177 and 1189, 12th ed. [1866]). The Companies Act, 1862, removed the rights and liabilities of parties out of the sphere of the ordinary relations of debtor and creditor wherein the law of set-off can operate. To permit any claim to be set off against a call would be contrary to the whole scope of the act. A member of a limited company stands in a different position from that of a member of an unlimited company. But if the amount of an unpaid call cannot be satisfied by a set-off of an equivalent portion of debt due to the member of the company upon whom the call is made, the amount of such call must be paid before there can be any title to receive a dividend with the other creditors. But when the call has been paid, the creditor, who is likewise a shareholder, stands exactly on the same footing with the other creditors as to a dividend due to him on a debt due from the company. He will then be entitled to a dividend upon the whole debt, and also to such further dividends as may be declared from time to time, provided he pay all calls which may be made. Therefore their Lordships affirmed the course taken [by the Vice-Chancellor, but, in effect, pointed out, that if Mr. Grissell paid the call, he would be entitled to receive a dividend.

The result of this decision must be regarded as eminently satisfactory; for to hold that a creditor, who unfortunately for himself was also a shareholder, was not entitled to receive payment of any sum of money which he had in good faith advanced to a trading company, would have been to adopt a doctrine savouring of those days in which the inability of a trader to meet his engagement was considered a crime (34 & 35 Hen. 8, c. 4, and 10 Eliz. c. 7). In modern times bankruptcy has come to be considered a misfortune; and surely amongst those persons who are especially deserving sympathy when involved in pecuniary difficulties must be reckoned those whose embarrassments are caused by having become members in a joint-stock company. Practically, shareholders have no means of controlling the management; they have joined in the vain hope of obtaining, without risk to themselves, a rate of interest higher than that afforded by Government and public stocks; and often they are wholly ignorant of the affairs of the company to which they belong. It requires the experience and practical knowledge of an accountant to understand the exact position of a trading company's concerns; and therefore shareholders, although responsible both at law and in equity for the acts of their directors, are wholly guiltless of the rash proceedings which end in insolvency. Consequently, to place creditors who are shareholders

in a worse position than those who are not, would be to inflict great and unmerited hardship on many unfortunate persons; and it is only a fair and reasonable construction of the statute to allow them to participate in the distribution of the assets of the insolvent company. The Lord Chancellor justly remarked that the statute makes no difference between those creditors who are and those who are not shareholders; and if the Companies Act, 1862, had postponed the interests of the former to those of the latter, assuredly its utility would have been much impaired.

THE BANK CHARTER ACT, BILLS, AND BANK NOTES.

THE following letter, which appeared few days ago in the *Times* is of permanent interest, and may usefully be preserved here as a supplement to our observations on the Bank Charter Act (ante, p. 200):—

Sir,—The memorial of the Bristol Chamber of Commerce presented to the Government a few months ago, and the one which is intended to be presented, at an early date, by the Manchester Chamber of Commerce, may be regarded as two pilot balloons, signifying with sufficient clearness that something of the nature of a serious and searching inquiry is likely to follow in the approaching session of Parliament. This is as it ought to be. It may be said that the theory of the law is abundantly understood already, and that no new evidence is wanted to add to our knowledge on that point; but here is a fact—that on a certain Wednesday night, about six months ago, the Bank of England published its reserve, not a large one, but for its own banking liabilities large enough, considering the state of the exchanges and the rate of discount prevailing at the time: on Thursday, the day next following, a great bill broker's establishment failed, and on Friday—that is to say, within twenty-four hours of the mischance in Lombard-street—the Bank of England allowed itself to be relieved of one-half of its reserve, or till of ready money, by an entirely new class of borrowers. Thus was presented an impending calamity of the gravest kind, and it was necessary to decide very promptly between two modes of counteracting it. There were but two—either to check the borrowers at the risk of a commercial convulsion, or else to take the means of satisfying them out of the sacred treasure of the issue department, at the risk of damaging the reputation of English money all over the world. The latter, somehow or other, was deemed to be the smaller evil of the two, and the Bank of England was authorised to continue its loans without regard to the limitation of its Charter Act.

After such events, the memorialists seem to say, and naturally enough, that if the theory of the Bank Charter Act is right, either its administration must be wrong, and should be corrected by the law, or else that the law—new law, if it is necessary—should interfere somewhere else. Something must be out of joint; let us try and find what it is.

One of the directors of the Bank of England who has served the arduous post of governor, and is an attentive member of Parliament, has just reprinted a lecture which a few years back he delivered to his constituents, "On the Principles of Banking, and on the Working and Management of the Bank of England." In the present republication he has prefixed very opportunely an essay of moderate length, in which he reviews the circumstances of the late crisis,

discusses its causes, and contends, that so long as the depositaries throughout the kingdom of the funds of other persons are to put every shilling out at interest, and in their selection of securities allow bills of exchange to degenerate into mortgage debts, no state of the law can prevent the natural consequences in the form of distrust and panic; because, he very truly says, the floating capital of a country, like its money, is almost an unvarying quantity; bills may be fabricated *ad libitum*, but how can that draw forth capital which is non-existing?

By very ingenious investigations made by Mr. William Leatham in 1840, and by Mr. William Newmarch a few years later, the amount of accepted bills afloat in Great Britain at any time given was estimated, to speak in round numbers, at from 120 to 140 millions sterling, of which one-fourth or one-fifth in amount were assumed to be of foreign or colonial origin. If we say that the amount now afloat is three times as large, it is probably an under estimate, and at least one-third, perhaps one-half, of the amount would be found to be in drafts issued in remote countries. Persons who are accustomed to handle bills soon come to perceive that they originate in contracts entirely distinct in their nature and incidents, and would throw them almost intuitively into some such classification as the following:—

Inland Bills.

Class 1.—The importing merchants draw on the large manufacturers and wholesale dealers at terms of three, six, or twelve months, for their sales of goods or of produce.

Class 2.—The wholesale dealers and large manufacturers sell to the smaller manufacturers and tradesmen in town or country, drawing in smaller amounts, and perhaps at shorter terms.

Class 3.—The manufacturers of Glasgow, Manchester, Leeds, Macclesfield, or Birmingham, draw on the merchants of London, Liverpool, or Bristol, usually at three or six months, for goods destined to foreign markets.

Class 4.—Sometimes the manufacturer draws on a speculative shipper, and the shipper draws again on the consignee's London or Liverpool house for an advance in anticipation of returns. This is one among many expedients by which bills are apt to be improperly multiplied; that is, drawn and drawn again, with a view of keeping a given amount, as it is expressed in Scotland, "on the circle," and a vicious circle it is.

Class 5.—Railroad companies and shipowners draw on their employers for carriage and freights.

Class 6.—Contractors engaged in building ships or warehouses, or in the execution of public works, are drawn upon persons who supply wood, bricks, stone, iron, and every variety of material.

Class 7.—The same contractors draw on the persons for whom such works are executed.

Foreign Bills.

Class 8.—The shipper of produce from a remote port draws for a portion of its value on his consignee in London, Liverpool, Bristol, Hull, &c.

Class 9.—Or the same person may, and generally does, in virtue of his credit, draw in anticipation of his shipments.

Class 10.—Such bills as the above would, in the ancient course of trade, have supplied the foreign consignee with the means of remittance for his own or his neighbours' importations, whenever they might arrive; but that course of dealing has been displaced by the exchange banks, which, with their numerous branches, now pretty much pervade the commercial

world. The consequence is, that the amount of bills issued in faith of a given value of produce is in a manner doubled, because—

Class 11.—The shipper sells his draughts against the homeward produce, not to the consignees of the outward goods, but to the local banks, and the consignees of the outward goods, in like manner, buys his remittance on London from the banks instead of from the homeward shipper. Thus a somewhat new and very extensive class of bills has come into the London market.

Class 12.—Cambist's bills. This is a large and most useful class of bills, by which foreign bankers or cambists are continually engaged in conveying values from market to market in such manner as to determine the trading transactions of the world without the transmission of bullion, or by the transmission of the smallest possible quantity.

Class 13.—Accommodation bills. Not to speak of this class in its worst sense and lowest kind, it is impossible to exclude it from a passing notice, considering that during the last year or two a system has been organised for raising capital applicable to the construction of railroads at home and abroad by means of bills drawn from continental cities on London banks, and of startling magnitude.

In reviewing the above classification it is necessary to draw the broadest possible line of distinction between bills that are issued on the faith of commodities in their progress from production to consumption, no matter at what stage or at how many stages, so long as their values are ultimately resolved in common with the commodities which they may be said to reflect, and those other bills that are issued on the faith of adventures in houses, ships, public works, and many varieties of immovable property. Let the ultimate security and success of such enterprises be ever so good, their proper place is in the fixed capital market. The obvious evidence of a loan upon the security of a ship, or a house, or a railway, is a mortgage or debenture, not a bill of exchange. To apply bills of exchange in that manner is an utter abuse of their intention; and that banks of deposit or of issue should ever have condescended to employ money not their own in securities of such insoluble description may well be matter of astonishment.

Moreover, we must not fall into the error of supposing that a circulation of bills can ever operate in aid of a limited amount of bank notes and coins; for the office of these, which are money, is to discharge debts; whereas the office, at all events the effect, of bills is to create debts, and multiply them at every step. The expansion, therefore, of trade in all its large relations is met by a corresponding increase of mercantile and banking expedients, which, although expressed in money terms, provide in a manner for each other without any expansion of money.

The money of the United Kingdom is of compound kind, and is computed to be in the proportions of from two-thirds to three-fourths metallic, and the remainder is of paper, amounting to about forty-five millions sterling, of which, again employing round numbers, fifteen are based upon gold, fifteen upon Government securities set apart, and fifteen upon the bare credit and good faith of the issuers. Among the various schemes of making the country's money better than it is, the two that are most conspicuously opposed is that of the *hard money* school, which suggests that it might be an improvement if there were no bank notes at all, except upon the solid basis of gold, and that of the school, humourously described at the Manchester meeting, which teaches that every man should be allowed to issue bank notes if he can find another man fool enough to take them. Between these two ex-

tremes there exists every shade of opinion. Of the two especially mentioned, the latter is beneath discussion, but the former at least deserves respect if it should not ultimately command it. The money of a country may be artificially increased in nominal amount, but cannot be increased in actual value, except by the natural course of industry and trade; therefore, although at moments of pressure and discredit there is sure to be a clamour for more bank notes, these do but give wings to the gold for flying off to other countries. A certain amount of money is, we know, a necessity to everybody, yet since it is in itself profitless, nobody holds more of it than he can help. Money made of paper, apart from gold, is useful under possible circumstances as a tax, just as sawdust or any other rubbish may be useful as food in a town besieged; but in ordinary circumstances money should be infallible in quality and as free of taxation as air and water.

Upon a retrospect of the eventful year which is approaching its termination, and perceiving the degradation and domestic misery which have been caused far and wide by the abuse of credit, is it surprising that the voice of provident and careful men should be raised in favour of some amendment or other to prevent a repetition of the past? And is not the conclusion forced upon us, that if the stream of money could be purified by a new arrangement of its components, and the same of the too turbid stream of credit, by

“Throwing off the worse part of it,
“To live the purer with the other half,”

the nation would be as rich, or richer, and the people would be as good or better, for the change?

Reviews.

Elements of International Law, by HENRY WHEATON, LL.D., Minister of the United States at the Court of Prussia, Corresponding Member of the Academy of Moral and Political Sciences in the Institute of France, Honorary Member of the Royal Academy of Sciences at Berlin, &c. Eighth Edition. Edited with Notes, by RICHARD HENRY DANA, jun., LL.D. 8vo., pp. 796. [London, S. Law, Son, & Co.; Boston, Little, Brown, & Co.]

In 1838, when Mr. Wheaton published the first edition of his great work, he was in his fifty-first year, and was well qualified by his studies and his experience to write with authority on international law. The twelve volumes of “Wheaton's Reports” represent twelve years of his labour as reporter of the Supreme Court of Washington, from 1816 to 1827, both inclusive, a period when the reputation of that court was at its height. He had sat during a busy time as one of the judges of the Marine Court. From 1827 to 1835 he represented his Government as *Chargé d’Affaires* at Copenhagen. He was then transferred to Berlin, and continued to reside there, first as minister resident and then as plenipotentiary, until his recall in 1846 by President Polk. In 1845 he completed the third edition of his work, and in 1847 he prepared an edition in French, which was published in 1848, the year of his death.

It is scarcely necessary to say much of the book itself. It may be sufficient to state for the information of those who know it only by reputation, that it treats of international law under the following heads:—1. Definition and sources of international law. 2. Nations and Sovereign States. 3. Right of self-preservation and independence. 4. Rights of civil and cri-

minimal legislation, and herein of the conflict of laws. 5. Rights of equality. 6. Rights of property; maritime jurisdiction, fishery, navigation of rivers, &c. 7. Rights of legation. 8. Rights of negotiation, and treaties. 9. Commencement of war and its immediate effects. 10. Rights of war as between enemies. 11. Rights of war as to neutrals. 12. Treaty of peace.

Our present object is to notice a matter which is personal to the gentleman whose name appears in the title-page to the edition now before us. Mr. Dana, in his Preface, after enumerating the editions which were prepared by the author, says:—

"In 1855, an edition, which has always been called the sixth edition (counting the French editions as the fourth and fifth), was prepared in Boston, with notes by Mr. W. B. Lawrence. In 1863 the seventh edition was published in Boston, also with notes by Mr. Lawrence. The present is, therefore, the eighth edition. The notes of Mr. Lawrence do not form any part of this edition. It is confined, as has been said, to the text and notes of the author and the notes of the present editor, who undertakes this work at the request of the widow of Mr. Wheaton, recently deceased, and of his only surviving children, his daughters."

Against this statement are to be set the allegations made by Mr. W. B. Lawrence, the editor of the sixth and seventh editions of the work, in a bill filed by him in the circuit court of Massachusetts against Mr. Dana and Messrs. Little, the publishers of the eighth edition, &c., and the statements in the affidavits filed in support of that bill.

Mr. Lawrence makes the following allegation in his bill:—

"Your orator shews that at the time your orator prepared his said edition of 1863, there was no book on international law which did collect, or had undertaken to collect, and present in a convenient form for reference, all the authorities bearing upon the different questions of international law discussed or referred to in said Wheaton's Elements or your orator's Annotations. That the said authorities consisted of judicial decisions, of the diplomatic discussions by the most distinguished diplomatists, and of the dissertations, treatises, and lectures of the most learned publicists and writers upon the law of nations. That your orator, in addition to the matter entirely original with himself, undertook to collect and present, and by a considerable amount of labour and intellectual exertion, did collect and present in his notes, and in a convenient form, with reference to each question so discussed, the decisions and opinions as aforesaid, giving them in full (the foreign ones being translated into English by your orator for the said edition of 1863), where they seemed to your orator sufficiently important so to be given, and in other cases referring to them by giving the name of the book and the page where the passage referred to could be found.

"Your orator further shews that a very large number of the authorities so collected and cited or quoted by your orator, and particularly those relating to diplomatic discussions and negotiations, and those shewing the way in which cases involving principles of international law have arisen between different nations and have been determined, are to be found in newspapers, gazettes, parliamentary debates, the series of books known as the Annual Register, Annuaire des Deux Mondes, Almanac de Gotha, different collections of treaties, as well as in the memoirs or biographies of the principal persons who were concerned or engaged in them, and other books not treatises on international law. That the number of books and papers of that nature examined by your orator in searching for the authorities and matters cited by him, is so great

that it is only possible to collect said authorities by devoting much attention to the subject for a great many years, and by making and preserving memoranda of such matters bearing upon the subject as from time to time might come to the knowledge of a person devoting a large part of his attention to such matters, and reading all such books as might relate to the subject, and availing himself of much intercourse with persons conversant with the subject.

"That there is no book which can serve as an index or digest to assist an author in any material respect in collecting such authorities.

"And your orator avers, that for upwards of thirty years he has availed himself of all the opportunities which have been open to him, by reading and otherwise, in this country and in Europe, where he spent much time for that purpose, to collect authorities of the nature referred to, and that such of them as he thought pertinent he embodied in his said annotations, giving from the said sources, or others referred to, a sufficient history of the events which gave rise to the questions involved.

"And your orator shews, that, for the purpose of perfecting his annotations in this respect, your orator spent much time and labour in examining the manuscripts deposited in the State department of this Government at Washington, and procured many valuable manuscripts from other sources. And from said papers, and from many other sources, your orator ascertained many facts not elsewhere stated or to be learned, and made many extracts and quotations, which your orator printed and published in his said annotations, and much of which had never been printed or published except in your orator's said annotations, nor collected except by your orator."

"And your orator avers that the respondents in their said book have copied, conformed to, and pirated the said annotated book, and the said annotations of your orator, and have used and availed themselves of the said book and annotations and the said labours of your orator."

In his deposition in support of the bill, Mr. Lawrence insists on certain alterations in the English text, made by him for various reasons, but principally on the authority of the author's French editions, and copied by Mr. Dana, which we think are not important. Mr. Dana, employed by the publishers of the former edition, and acting for the author's family, may fairly have considered himself entitled to treat the last edition as an authentic copy of the author's text. But in an affidavit by Elisha R. Potter, filling more than forty octavo pages of print, an immense number of coincidences between Mr. Dana's notes and those of Mr. Lawrence are stated, which, if they are correctly set forth, cannot be accidental. Of these we give the following samples, premising that Mr. Potter uses the letter L. to signify Lawrence's edition, and D. to signify Dana's:—

"L., 219, quotes a passage from 'Rush's Memoranda of a Residence in London,' p. 432. D., 177, refers to 'Rush's Residence in London,' p. 432. The matter quoted and cited by both is found on p. 445, and the chapter treating of the subject referred to begins on p. 416 of the book cited by Mr. Lawrence.

"The Swiss Circular of April 9, is cited by L., 706; D., 514—both citing Almanac de Gotha, 1861, as authority. Upon reference to p. [60] of that book, it is found that the true date is April 11.

"A passage from the Berlin Decree is quoted in L., 820, D., 673, with marks of quotation. The quotation in both is in English, and the reference in both is to the volume and page of Martens, where the original French text is found. The translation is identical in both. The translations given in New Annual

Reg. 1806, xxviii [241] and Wait's Am. State Papers, 1808-10, vol. 7, p. 163, and in Ann. Register, 1806, Rivington's ed., New Series, 567^o, differ very materially from each other, and from the translation in the notes of L. and D."

"D., note 112, p. 266. L. cites, in immediate connexion with the text, p. 333, for a further view of the treaties on this subject, the French edition of Wheaton's History of the Law of Nations. The last treaty there mentioned was of 1841. D., after mentioning the conclusion of the treaty of 1857, refers to the corresponding page of the edition in English, published 1845, for a history of the subject between 1830 and the adoption of these treaties which was concluded in 1857. D. makes the usual mistake in copying references to treaties, in omitting all means of distinguishing the series intended. D. refers to An. Reg. 1857, p. 12-40. I cannot find there anything on the subject. He also refers to An. Reg. 1858, 830, which contains no such page. The only way of accounting for this is, that D., in copying L.'s list of authorities on p. 335, omitted a whole line, thus—it reads in L., 'Annual Register [1855, p. 291. Almanac de Gotha, 1856, p. (54). Ib.] 1857, pp. (12), (16), (23), (40). Ib. 1858, p. 830.' In Dana, all the part in brackets—about a line—is omitted, and it is made to read 'Annual Register, 1857, pp. 12-40, and 1858, 830.'"

"L., 980. 'Lord Russell to the diplomatic representative of England,' citing Le Nord, 30th Oct. 1862.

"The despatch given in Le Nord is addressed to 'James S. Lumley, Esquire.'

"L., 75. 'Council of State for the Kingdom of Poland was re-established.'

"This is a literal translation of the phrase of the original given in Le Nord, 8th April, 1861, cited by L.

"L., 165. Quotes from Westlake and Tripler as to a French law, which L. says refers to 'real property or rights susceptible of hypothecation.'

"A reference to either Westlake or Tripler shows that the law refers to real property and rights in and to the same; that it does not refer to personal property; and that corporeal personal property is not susceptible of hypothecation, unless in some way attached to or connected with real estate."

We have not the means of verifying these statements by reference to Mr. Lawrence's edition. If they are accurate, it is difficult to avoid the conclusion in support of which they are made—a conclusion contradictory to Mr. Dana's prefatory statement, that the notes of Mr. Lawrence do not form any part of his editions, and fatal to Mr. Dana's character. It would be unfair to make any comment on the case until Mr. Dana has had time to prepare and publish his defence.

"D., 56. Lord Russell to the 'English Ambassador'—cites no authority.

"Mr. Lumley was not Ambassador, but Sec. of Embassy.

"D., 64. 'Diet of Poland was re-established,' citing no authority in which this fact is stated.

"The distinction between the Diet and the Council of State is well known to all persons conversant with this subject.

"D., 137, says that the French law refers to 'real property and corporeal personal property,' and cites, in this connexion, Westlake."

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THE JURIST.

LONDON, DECEMBER 29, 1866.

THE necessity of either discontinuing "THE JURIST," or greatly altering the plan of it, has been for some time contemplated by its proprietors. But, while they have made no secret of this, they have been unwilling to announce the adoption of the former alternative so long as the latter did not seem to be impracticable. They are now satisfied that the occasion is not favourable for what would be, in effect, the commencement of a new legal periodical, and it is, therefore, our melancholy duty to state, that our next number (which will complete our thirtieth volume) will be our last. It is scarcely necessary to add, that Mr. Fisher's invaluable Annual Digest of the Reports, hitherto published in connexion with "THE JURIST," does not die with it, but has, we trust, a long and flourishing career before it.

Although the commencement of "THE JURIST" reports in the year 1837 was a step towards a vicious system, it was inevitable that such a step should be taken. The so-called regular reports were very expensive, while the publication of them was dilatory and uncertain; the Law Journal, though always meritorious, stood much below its present standard of excellence and punctuality; the intrinsic convenience of a weekly series of concise reports was obvious; competition appeared to be the only remedy for the only evils of unregulated reporting which were then recognised—dearness and unpunctuality; and the excessive development of the other evils latent in the system, by the host of imitators which followed the first successful experiment, was necessary to excite an effectual agitation for amendment. In that agitation we were not inactive. More than twelve years ago we wrote in these terms:—

"The great evil lies in the reporting system; and, especially now that the fusion of law with equity has commenced in earnest, there is no hope that any lawyer will be able to master his business until two things have been done—first, the purification and abridgment of the existing reports by authority, resulting in either a chronological series or a digest of subsisting authorities in a concise form; and, secondly, the establishment of an authorised staff of reporters for the future. If such a reform were effected on a sound basis, 'THE JURIST' would gladly retire, and seek some new form of existence." (18 Jur., part 2, p. 430, Nov. 11, 1854).

The time for the retirement of "THE JURIST" has arrived, although the reform is far from being con-

summated, or even secured. The desire of the profession for an authorised and well-regulated series of reports has not been satisfied. The Law Reports have been established, and of their rivals it is not likely that one, except the Law Journal, will survive the following year. The Law Reports, however, as a whole, are not good. There are no signs of supervision or editing about them, although the two editors receive, we are told, 1200*l.* a year. We suspect that the editing of the Law Journal, which is, and always has been, a reality, costs very much less. It was in the power of the Committee of Law Reporting greatly to amend the method of reporting. Instead of attempting this, they seem to have been content with the position of collectors of subscriptions, and, indeed, their success has been exclusively in the performance of that function, and the merit of it is due as much to the credulity and hard cash of the subscribers as to the vociferation and empty promises of the council. What else has been remarked in their proceedings has not been creditable to them. Their existence was due to a scheme based on injustice, and they have not abandoned the platform. They behaved with injustice to those of the regular reporters who asked for a proper guarantee of their interests; and the dodge by which the contract for printing and publishing their reports was settled without giving the law publishers an opportunity of competing, appears to be explicable only on the hypothesis of a job. They have shewn themselves incapable; they are irresponsible; and the copyright of their reports—the present site of which is a legal mystery—may, if and when it has acquired enormous value by the extinction of all rivalry, be found to be in private hands. That event, if the right view were taken of the justice of the case, would perhaps lead to a satisfactory result, for no consideration could be asked for a property so acquired, and the establishment by the Legislature of an authorised and exclusive series of reports, under really responsible and public management, might then be justly demanded, and effected without the payment of a shilling for the purchase of vested rights. To those who think that prospect too remote, we would say, support the Law Journal Reports. They are cheaper and better than the Law Reports; they have no privilege, and depend for success on their merits alone; their merits, therefore, are likely to be sustained.

CODIFICATION.

IN an article in the May number of the *Law Magazine*, intitled "Legislation," Mr. O. S. Greaves argues against the project of a digest of law, and in favour of the preparation of a code piece-meal. No discussion of the subject can be complete that does not

include a careful examination of the conclusions to which Mr. Greaves has been led by experience and reflection.

He first disposes of the simpler and more limited scheme of a consolidation of the existing statute law, which the Statute Law Commission attempted to accomplish, and gave up. The main difficulty was found to be, that enactments, like garden flowers, cannot be transplanted without undergoing change.

"The supposition that a consolidation of the statutes in their very terms is practicable, proceeds upon the assumption that the terms in the consolidated statutes would bear the identical same meaning as they did in the former statutes. Now, although this might be so in many cases, it certainly would not be universally so, for there are many old acts the terms of which have, by the decisions of the Courts, obtained a special and particular meaning, so that the existing law can hardly be said to depend upon the words of the acts alone, but is rather to be found in the acts, together with the cases upon them, and consequently if the old acts were repealed, and re-enacted again in their very terms, whenever a case arose upon them, the question might, and no doubt would, be raised, whether the new enactment was to be understood in the same sense as the decisions had put upon the old enactment, and the amount of uncertainty that might be thus created would be very great. The difficulties that might have arisen from this cause in the case of the Treason Act, 25 Edw. 3, stat. 5, c. 2, were felt to be so great that the Statute Law Commission, after the most mature consideration, determined that this statute could not safely be consolidated with the other criminal enactments. Another difficulty arising from such a cause is, that a clause in one statute may, either by itself or when construed with the rest of the statute, bear one meaning, but when transferred into a consolidation act, and separated from its former associated clauses, and placed among clauses taken from other acts, it may be open to an entirely different construction."

After noticing the difficulties arising from direct and implied appeals, Mr. Greaves comes to the conclusion that mere consolidation is impracticable, and he asks—

"Supposing all the statutes could be consolidated without alteration or amendment, what would be effected by it? The law would not be altered in any respect, and all that would ensue would be, that, instead of enactments on each particular subject being scattered over the statute-book, they would be collected together in acts devoted to each;" and, he might have added, it does not need the interposition of the Legislature to prepare a new edition of Chitty's Statutes. But even a complete and digested collection of the statute law in force, would not render the "Statutes at Large" useless or obsolete. Not only is it frequently necessary in practice to apply a repealed enactment to a transaction which occurred while that law was in force, but it is never safe to construe an act of Parliament without first clearly understanding the law which it was intended to supersede.

Dismissing consolidation as impracticable, Mr.

Greaves endeavours to remove the prejudice which he thinks exist against a code, by observing, that as the whole of the statute law of a State may be divided into as many codes as the Legislature thinks fit, and as every code of which we are aware has been in fact based on existing law, "our statute law is really a collection of codes; and those statutes which are merely declaratory of the common law are a codification of the common law. Now, no one has ever doubted the practicability or expediency of making those statutes in any case where any doubt existed, or any advantage could be obtained. The general denunciation, therefore, of codes in England which is so commonly heard, rests on a great misapprehension, for we from time immemorial have had and always must have codes."

The remark that it is expedient to declare the common law by statute "where a doubt existed, or any advantage is to be gained," does not touch the question, whether it is expedient to change those parts of the common law which lawyers, if they do not deceive themselves, understand, into statutes, which lawyers have, if anything is to be learned from experience, good grounds for believing they will not understand.

Conscious of this, Mr. Greaves proceeds to consider the question as it regards the body of the common law.

"As to the supposed superiority of the common law, they who rely upon it seem to overlook several very serious defects. When we speak of the common law, we mean that body of law which is contained in our books of reports, and which depends in no respect upon any statute. Now, any one who is really conversant with this law must be perfectly aware that there are innumerable points which are in the greatest doubt. Nothing, therefore, can well be more incorrect than to assume that such a law is so certain as to justify any one in founding an argument upon its certainty."

It is scarcely necessary to point out the irrelevancy of this remark. The question is as to the form in which the law ought to be recorded or expressed, not as to the completeness of it at any given epoch. It may well be, that there are many questions which, as the law now stands, are uncertain or unprovided for, but why that uncertainty or defect of provision should be charged against the common law rather than against the Legislature, we are at a loss to understand. The statutes at large date from an earlier year than the Year Books. And though the bulk of the statutes is much less than that of the reports, and the subjects to which they extend are neither so comprehensive nor so numerous as those which remain under the dominion of the common law, we think it will be found that many more doubts arise in daily practice upon the construction and application of statutes than upon reported cases; and it is only erroneous, ambiguous, or conflicting cases that we have to take into account. The common law is, as we have said, no more guilty of a *casus omissus* than the statute law. Erroneous, conflicting, and ambiguous decisions are generally dealt with in the course of time by the courts in a more satisfactory manner than they could be by

the Legislature, which, whether it consolidates and amends, or amends only, generally contrives to make many defects in correcting one. But this has nothing to do with the question of digest or code. In preparing a digest, and in preparing a code, a critical survey, expurgation, and classification of the existing authorities is equally necessary; and what we have to discuss is, whether it is safer and more convenient, or, on the whole, preferable, to rest content with the authorities so expurgated and classified, or to distill a code from them. In preparing a digest, or in the annual revision of the subsequent decisions which should follow the enactment of a digest, the mode of dealing with erroneous, conflicting, or doubtful decisions, is plain and easy. The erroneous decisions must either be suppressed or be recorded (by the digesting authority) as if they had been decided the other way. And so of conflicting and doubtful decisions. All this is a matter of necessity, whether the ultimate result be a digest or a code. And so we come back to the question of the form and authority of the record. Mr. Greaves proceeds:—

“A great part of our common law is founded upon the decision of the Courts. Now, the first thing that must strike any one is this strange anomaly. No record of any judgment is admissible in evidence against any one who is not a party or privy to it, upon the sound ground, that no one ought to be bound by a judgment in a case in which he had no right to be heard; and yet the law upon which this judgment proceeded, and which may have been thus enunciated for the first time, is held to be binding in every other case where the same question arises. It would be answered, no doubt, that the decision proceeded on the previously existing law; but this is one of those fallacies which bring no credit to the law. Again: it cannot be doubted that there are many decisions which would have been reversed by a superior court; and in these instances the law is fixed by the accident that the parties submitted to an erroneous decision against them.” This is surely very flimsy quibbling. A stranger to a suit is not bound by the judgment in it, because it is impossible for the Court to be sure that the case was fairly represented by the evidence or admissions upon which the verdict and judgment proceeded. But the Court, especially when aided by the arguments of counsel in a contested case, is supposed to be competent to declare the law; and it is always open to a new litigant to bring to the notice of the Court any criticism that may occur upon a past decision, and, if that was not the decision of the Court of ultimate appeal, to have it reviewed by a Court of higher jurisdiction. Mr. Greaves does not seriously mean to suggest any alteration of the existing practice in this respect.

But his conclusion on the whole is, that “so far from the common law, as found in our books and reports, being a safe ground whereon to rest an argument against a code, an accurate knowledge of the state in which it really is would satisfy any reasonable person, that nothing is more desirable than that by some means or other it should itself be free from doubts and difficulties, and reduced into a plain,

clear, and intelligible body of law.” Let us cite against this what he says a little further on against the statute law, that is to say, a code:—“The public in general are only aware of the cases which come before the courts, but these are few indeed in comparison with them in which the opinion of counsel is taken. It is, indeed, no uncommon thing for one counsel to have to answer sundry cases upon a single clause. But, though nothing like an accurate estimate can be formed of the amount of mischief arising from this cause alone, no one who has noticed the number of cases which of late years have been decided in the courts upon the construction of statutes, can doubt that their imperfect preparation is a great public mischief which loudly calls for a thorough and complete remedy.” Then it appears that while Mr. Greaves attributes to the common law an amount of obscurity and imperfection, which we do not admit to exist, he has no better account to give of the statute law; and after all the question recurs, whether the common law cannot be amended without sacrificing the great and peculiar advantages which are admitted to belong to it; and whether in the preparation and periodical revision of a code, those evils which have not hitherto been avoided in the formation of law by direct enactment, can be to any considerable extent avoided. On the first question Mr. Greaves says:—

“Another proposal which seems now to be in favour with some persons, is a digest of the common law. At present we have neither seen any specimen of such a digest, nor any clear and distinct statement of what it is intended to be, and as far as we are aware, it is the mere theoretical excogitation of gentlemen who have never attempted to frame a single page of such a digest. We have already had a practical proof of the danger of embarking in any scheme of legislation without first testing and trying how far it may be possible, in the consolidation of the statute law—a work which is to all appearance an infinitely easier task than any digest of the common law would turn out to be.

“As we have no specimen or distinct statement of what such a digest is intended to be, we can only view it in the several lights in which it may be capable of being contemplated. Of course, it must be in writing. Then, is it to be passed as a statute, or to have the form of a statute? If it is not to have the form of a statute, it will be of no more authority than a text-book, and the judges will be no more bound by it than they are by a text-book. Now, the great use of any digest or code of the common law will be in its finally settling doubts, removing inconsistencies, and doing away with all objectionable law; and whatever course may be taken, the primary object should be to frame a collection of law that should bind judges and every one else alike. If it is to be or have the force of a statute, call it by whatever name you please, it is a code; and it will be binding on every one alike. Then what shape is it to assume? Is it to be in simple legal propositions or in prolix clauses? If in the former, it will be exactly the same as the New York code. If in the latter, it will be open to all the objections that can be raised against a fixed rule of law, with the addition

of every objection that may arise from its greater prolixity. . . . Again, is it to be a digest of cases briefly stated? If so, and these cases are to be stereotyped by statute, we cannot conceive a more mischievous proposal. It is perfectly clear, that it is a very much easier task to write a legal principle in clear language, than it is to abstract the facts of a case, so as to omit nothing that is material, and insert nothing that is immaterial. Long experience has taught us that a case may be abstracted with every care to secure accuracy, a new case shall arise and lead to a fresh examination of the old case, and it will be found that the new case has drawn attention to facts which were thought immaterial before, and not abstracted. The conclusion, in fact, to which we have come, without any doubt, is, that the cases must remain as they are, and that the only use that could safely be made of them is to refer to them as examples, as the New York Commissioners have done for the purpose of illustrating the provisions of the digest. A further question is, how are erroneous or discordant cases to be dealt with? It often happens that an erroneous decision purports to proceed upon perfectly sound grounds, and that either the grounds have been misapplied or the facts misreported, so as to make a decision that really was right appear to be erroneous; are such cases to be declared erroneous simply, or is the correct principle to be laid down? If the former, will not the correct grounds be shaken? If the latter, the plan of the New York code will be followed. Again: how far back is the digest to extend? The Year Books are occasionally spoken of as if they were useless. It may be doubted whether a great part of the conflicting decisions of recent years may not be owing to the prevailing imperfect knowledge of our old black letter law. . . . To form a digest of the law, and omit the Year Books and other old reports, would be pretty much as wise as to make a statue without a head. If there is to be a digest of cases, has it been considered what its size would be? Viner's Abridgment is twenty-one volumes; could a digest of the existing decisions be contained in forty?"

We should think ourselves well off if we could exchange the existing chaos of more than 1500 volumes for a well-arranged digest of 40. But Mr. Greaves here appears to be affecting ignorance and simplicity. The scheme of those who propose a digest has been often explained, and is perfectly well understood. The digest will include every case in the Year Books, and in all the other reports, which is not considered obsolete, superfluous, erroneous, or objectionable on any other ground. It will reject all the rubbish with which, from various causes, the reports have been incumbered. Each case will be reported in the digest as it ought to have been reported in the first instance, so far as materials for such a report exist. It is true, that in abstracting a case, some circumstance not wholly unimportant may be overlooked. But as that process must be gone through before a code can be prepared, and as it is certainly, in our opinion at least, far more difficult "to write a legal principle in clear language" than to make a complete abstract of a case, the objection tells with much greater force against a

code than against a digest. The codifier will deduce his legal principle from what he considers to be the material facts of the case, and then will be begun the task of stating it in clear language. If he is preparing a digest, he will stop at the statement of the material facts. In either case, the overlooked facts will be forever suppressed. If the labourers on the digest are well selected, they will be far less likely to make any mistakes of that kind than the majority of the reporters who furnish the material from which the law in its new shape, whether of code or digest, must be fashioned.

We hope, in our next number, to find space for some illustrations of the difficulties incident to a code, drawn from the labours of the New York Commissioners.

Court Papers.

EQUITY SITTINGS, HILARY TERM, 1867.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Friday Jan. 11	Appeal Motions and Appeals.
Saturday 12	Petitions and Appeals.
Monday 14	} Appeals.
Tuesday 15	
Wednesday 16	
Thursday 17	Appeal Motions and Appeals.
Friday 18	} Appeals.
Saturday 19	
Monday 21	
Tuesday 22	} Appeals.
Wednesday 23	
Thursday 24	
Friday 25	Appeal Motions and Appeals.
Saturday 26	} Appeals.
Monday 28	
Tuesday 29	
Wednesday 30	Petitions and Appeals.
Thursday 31	Appeal Motions and Appeals.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Friday Jan. 11	Appeal Motions and Appeals.
Saturday 12	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Monday 14	} Appeals.
Tuesday 15	
Wednesday 16	
Thursday 17	Appeal Motions and Appeals.
Friday 18	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Saturday 19	} Appeals.
Monday 21	
Tuesday 22	
Wednesday 23	Appeals from the County Palatine of Lancaster and Appeals.
Thursday 24	Appeals.
Friday 25	Appeal Motions and Appeals.
Saturday 26	Petitions in Lunacy, Bankrupt Appeals, Appeal Petitions, & Appeals.
Monday 28	} Appeals.
Tuesday 29	
Wednesday 30	
Thursday 31	Appeal Motions and Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

*Before the MASTER OF THE ROLLS.**At Chancery-lane.*

Friday Jan. 11	Motions and General Paper.
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Monday..... 14	General Paper.
Tuesday..... 15	
Wednesday 16	
Thursday 17	Motions and General Paper.
Friday 18	General Paper.
Saturday 19	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday..... 21	General Paper.
Tuesday..... 22	
Wednesday 23	
Thursday 24	Motions and General Paper.
Friday 25	General Paper.
Saturday 26	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday..... 28	General Paper.
Tuesday..... 29	
Wednesday 30	
Thursday 31	Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART**At Lincoln's Inn.*

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Saturday 12	Petitions, Short Causes, and Causes.
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Tuesday..... 15	
Wednesday 16	
Thursday 17	Motions and Causes.
Friday 18	Petitions and Causes.
Saturday 19	Short Causes and Causes.
Monday..... 21	Causes.
Tuesday..... 22	
Wednesday 23	
Thursday 24	Motions and Causes.
Friday 25	Petitions and Causes.
Saturday 26	Short Causes and Causes.
Monday..... 28	Causes.
Tuesday..... 29	
Wednesday 30	
Thursday 31	Motions and Causes.

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*Before the Vice-Chancellor Sir W. P. WOOD.**At Lincoln's Inn.*

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Tuesday..... 15	
Wednesday 16	
Thursday 17	Motions and General Paper.
Friday 18	General Paper.
Saturday 19	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday..... 21	General Paper.
Tuesday..... 22	
Wednesday 23	

Thursday 24	Motions and General Paper.
Friday 25	General Paper.
Saturday 26	Petitions, Short Causes, Adjourned Summonses, and General Paper.
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Tuesday..... 29	
Wednesday 30	
Thursday 31	Motions and General Paper.

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*Before the Vice-Chancellor Sir RICHARD MALINS.**At Lincoln's Inn.*

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Tuesday..... 15	
Wednesday 16	
Thursday 17	Motions and General Paper.
Friday 18	Petitions and General Paper.
Saturday 19	Short Causes, Adjourned Summonses, and General Paper.
Monday..... 21	General Paper.
Tuesday..... 22	
Wednesday 23	
Thursday 24	Motions and General Paper.
Friday 25	Petitions and General Paper.
Saturday 26	Short Causes, Adjourned Summonses, and General Paper.
Monday..... 28	General Paper.
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The Office of THE JURIST is removed to No. 39, BELL YARD, TEMPLE BAR, W. C., where all communications for the Editor are requested to be addressed.

Orders for Advertisements, and Letters on business matters, to be addressed to the Publisher as above.

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THE JURIST.

LONDON, JANUARY 5, 1867.

THE LAW REPORTS.

WITHIN eighteen hours after the publication of our remarks on the Law Reports, the council issued a special notice, in which they state that "they are not a commercial body;—no trade profit is derived from the subscriptions;—but the full amount is applied to the professional object of establishing a set of acceptably authentic reports, prepared and published under the control of the council, who, in accordance with the provisions of the Bar scheme, act gratuitously as representatives of the interests of the profession in the proper promulgation of the law, as evidenced by judicial decisions."

We regret that the council are unable to give to the profession a more intelligible and satisfactory assurance, that the object for which the Bar met at Lincoln's Inn in December, 1863, has been secured. That the ornamental directors, under cover of whose names the scheme is worked, derive no "trade profit," which, we presume, means pecuniary profit, from the subscriptions, has never been doubted. Ornamental directors are, however, useful aids in the pursuit of profit.

An Anxious Inquirer asks us to explain what we mean when we say that the copyright of the Law Reports is a legal mystery. We mean a simple confession of ignorance. The Law Reports purport to be reports prepared and published in accordance with what is called the Bar scheme. According to that scheme the reports should be placed under the general management and control of a council consisting of members (not necessarily lawyers) appointed by the four Inns of Court, Serjeants' Inn, and the Incorporated Law Society, respectively, and including also the Attorney and Solicitor General and the Queen's Advocate, *ex officio*. Every reporter should be appointed for a term of five years, subject to the approval of the senior judge of his court, and should be removable by the council at will. The proceeds of the sale of the reports are to be applied, first in payment of the costs of printing and publishing and a moiety of the salaries of the editors and reporters; then in payment of the secretary's salary and the expenses of the council in full; then in payment of the second moiety of the other salaries; and, lastly, in augmenting the salaries of the editors and reporters, or such of them (if any) as the council shall consider proper to be augmented, or in constituting a reserve fund, or in such other way as the council shall think best calculated to improve the system of reporting, that is to say, as it may please the council; and the accounts should be audited on behalf of the editors and reporters.

The first thing to be observed is, that this scheme is not being acted on. No council including delegates from Serjeants' Inn and Gray's Inn exists.

It is very clear that this scheme does not involve a charitable trust, enforceable in equity or otherwise.

A charitable trust cannot exist without a subject of trust. Here is no fund or property of any kind given for charitable purposes. The reporters sell their labours as a matter of business, in consideration of a price paid for it. The subscribers pay their yearly subscriptions as a matter of business, in consideration of the books which they hope to receive during the year—a hope which does not seem to be fortified by any right of action. There is no settled fund or property. The copyright in each report, as published, would be in the individual reporter who prepared it, or in the person or persons to whom he had assigned it or agreed to assign it. With whom the reporters have contracted, if they have contracted, we are not told. Clearly they could not contract with the council as a permanent body, because it is only a voluntary association unincorporated. There can be no implied contract with the possible future members of the council; and if there is a contract, express or implied, with the present members of the council, vesting a legal or equitable title to the copyright in them, there is no trust or legal obligation to prevent those individuals from dealing with it as they please, or to oblige them to admit future delegates from the Inns of Court to share their power.

The difficulty is greater with respect to the so called copyright or trade-mark in the plan and name of the reports. The contract with the printers has never been published. We are told that they undertook the risk of the enterprise for three years on certain terms. These terms, we may presume, were sufficient to prevent Messrs. Clowes from acquiring the copyright in the plan and name of the Law Reports, which would otherwise have vested in them, and it may be that the contract was sufficient to vest that copyright in some other persons. All this is in the dark; nothing short of a surgical operation is likely to bring it to light, and the only course we can suggest to an Anxious Inquirer is, that he should reprint the January numbers of the Law Reports, for sale at a low price, and abide the disclosures which will have to be made in the ensuing proceedings.

The Law Times, after vehemently and repeatedly attacking the agitation for reform, the Bar scheme, and the Law Reports, in terms a portion of which Mr. Daniel thought it worth while to reprint as a specimen of scurrility, finding it no longer possible to contend against the rivalry of the Law Reports and Weekly Notes, turns round and, with characteristic impudence, declares the Law Reports to be the very thing the profession wants, and has always desired, and urges the council at once to buy up the Law Journal, since they cannot starve it. The explanation of this is, that with the Law Journal is published a weekly legal newspaper, which, being conducted respectably and with ability, the Law Times must find very objectionable. It is well, however, to learn from an enemy. The Law Times says truly, that the Law Journal Reports appear in an inconvenient form. The form might with great advantage be exchanged for that of the regular reports. So altered, with their other advantages, and after the experience that has been had of the Law Reports, the Law Journal Reports, at three guineas a year, ought to gain an easy victory over their rivals at five guineas.

Our remarks in favour of the Law Journal have not sprung from any interest or "inspiration," direct or indirect, but have been suggested by the information casually given to us by one of the proprietors of "THE JURIST," that a gentleman had called on him—of course disclaiming any mission—to state that he believed—indeed, had no doubt—that an offer by the proprietors to sell their influence with their subscribers would be favourably entertained.

CODIFICATION.

(Continued from p. 486).

MR. GREAVES suggests that the consolidation of the common law and statute law should be effected gradually by a number of different acts framed on a uniform system, and passed in a regular series, year after year, according to the ability of Parliament to deal with them; for he thinks that Parliament would not adopt bills for codifying the law without examination and alteration. But by that procedure the main advantage of a code—that it is one consistent whole, composed of parts fitted together, which supplement and illustrate each other without repetition—would be lost. A well-drawn code could not be divided into parts less extensive than the main divisions of political, civil, and criminal law, and procedure, to be enacted, and come into operation, at different times.

Mr. Greaves adds, that "to avoid the possible omission of any point of the common law, it would be prudent to provide, that in case any such point should arise, it might be determined in the way it would have been if the act had not passed." This is a remarkable admission by implication of the inutility of any attempt to codify the common law; for the only object of codification, as distinguished from amendment is, as its name implies, to reduce the sources or authoritative statements of the law into one convenient book or body, beyond which no excursion should be necessary or even allowable. To frame a code, with the inevitable result of introducing many new doubts and new errors, and to allow in every case, in addition to the argument on the construction and application of the code, an argument to shew that it does not apply at all, and then a further argument on the old common law authorities at large, would neither lighten the labours of lawyers nor benefit the public.

For the purpose of preparing the consolidation bills, and of generally assisting the Legislature in the expression of its will, Mr. Greaves recommends the appointment of a board, consisting of at least five of the ablest and most experienced lawyers that could be induced to accept the office; and, for the purpose of attracting able men, he proposes that they should be paid at least as well as the judges—an expense that could not well be objected to by Parliament, which spends more than 100,000*l.* a year in printing alone. The president of the board should be a member of the House of Lords, and the others should be entitled to sit, though not to vote, in the lower House, in order to afford explanations and answer objections. Bills officially prepared, but not partaking of the character of party measures, might then be under the charge of a member of the board, and might be proceeded with, notwithstanding a change of ministry; and the proceedings of a select committee on a bill would be greatly aided by the presence of a member of the board. It was by similar means that the integrity of the criminal law consolidation bills was secured. Every bill likely to pass should at a convenient stage be transmitted to the board, who should be required to report any objections and amendments that occurred to them, and to alter the form and expression of the whole or of any part; amendments, also, should be referred. In the suggestion, that "any member should be at liberty to call upon the board to prepare or correct any bill for him," we do not concur. It is not too much to ask that a member shall abstain from attempting legislation until he has cleared his ideas sufficiently to express them in the form of definite resolutions, if not of a bill. Resolutions adopted by either House might be referred to the board as instructions to frame a bill.

Mr. Greaves is so well pleased with the arguments of the New York Commissioners in favour of a code, (filling sixteen pages of their introduction to the civil code), that he transcribes nearly the whole of it. We have in a former article made some remarks on it, and we confess, that if the volume contained nothing better than that argument, we should have quickly laid it aside. The code itself is a very able work, and reflects the greatest credit on the compilers. It is so good, that it affords a really satisfactory demonstration of the inexpediency of codifying any well-established and tolerably complete system of judiciary law. Of the utility of a code prepared under circumstances like those which caused the framing of the French codes, or those which now render a code necessary for India, we do not suggest a doubt; the reasons we have urged against the enactment of a code for England have no application to occasions so different.

Mr. Greaves says—"To frame a digest of the cases would take a great length of time, and would in all probability prove a failure in the end. If a fair experiment were made, it would soon be seen that abstract principles must be enunciated, and certain rules must be given, especially when doubts and difficulties existed. *The great fault of our case law is, that each case is a single instance of some supposed rule of law, but there is no authoritative declaration of that rule anywhere.* But if a digest is to be framed, it must of necessity enunciate the several rules of the common law, even if it subjoin a digest of the cases bearing upon the rule. What would a digest of the law of contracts be which contained no statement of what constituted a contract?"

It would be a digest, and not a treatise. The advocates of a code are so possessed with their idea, that they cannot even contemplate a digest without seeing it as including a code. It is those definitions and enunciations of abstract principles, constituting the essence of a code, and wholly foreign to the notion of a digest, which we desire to avoid as the sources of doubt and error.

Let us see now with what accuracy and certainty the subject of contracts is treated in the New York code, which does attempt to state what constitutes a contract. Before, however, we can do that to the satisfaction of our readers, we must give a general account of the code and its principal divisions.

The civil code of New York, or rather, the present draft of a civil code—for it has not yet been adopted by the Legislature—owes its origin to an act of the Legislature of New York, passed in 1857, declaring that the substantive law of that State should be contained in three codes—political, civil, and penal. A code of civil procedure, and another of criminal procedure, had been prepared by a former commission, and the code of civil procedure was adopted in 1848. The other codes have not yet been passed. The civil code contains 2034 articles or clauses; and generally each clause consists of a single sentence. To many of the clauses brief notes are appended, consisting either of references to authorities, or of explanations where, by reason of a departure from authority or otherwise, they are deemed necessary. The code, with the notes, is comprised in 660 small and loosely printed octavo pages. More than half of this space is occupied by the summaries of the contents of the chapters and the notes, so that the actual text of the code may be said to occupy little more than 300 pages of pica type—a size larger than that in which the Law Reports are printed. It is unnecessary to say, that a multitude of authorities, deciding difficult questions as to the limits and application of various general principles, are not represented in, or replaced by, the code.

The code commences with some general statements in nine sections, mainly descriptive of its own status, which we transcribe:—

"1. This act shall be known as the Civil Code of the State of New York.

"2. Law is a rule of property and of conduct prescribed by the sovereign power of the State.

"3. The will of the sovereign power is expressed—first, by the constitution, which is the organic act of the people; secondly, by statutes, which are the acts of the Legislature, or by the ordinances of other and subordinate legislative bodies; thirdly, by the judgments of the tribunals enforcing those rules which, though not enacted, form what is known as customary or common law.

"4. The common law is divided into—first, public law, or the law of nations; secondly, domestic or municipal law.

"5. The evidence of the common law is found in the decisions of the tribunals.

"6. In this State there is no common law in any case where the law is declared by the five codes.

"7. All civil rights are either—first, rights of person, or, secondly, rights of property.

"8. Rights of property and of persons may be waived, surrendered, or lost by neglect in the cases provided by law.

"9. This code has four general divisions—the first relates to persons; the second to property; the third to obligations; the fourth contains general provisions relating to persons, property, and obligations."

The first division consists of three parts—first, persons; secondly, personal rights; thirdly, personal relations.

1. Persons—Minors; adults; unborn child; persons of unsound mind (including habitual drunkards); custody of minors, &c.; powers of minors; contracts of minors; when minors may disaffirm; contracts of persons of unsound mind; wrongs; Indians.

2. Personal rights—General personal rights; defamation; libel; slander; privileged communications; protection to personal relation; right to use force.

3. Personal relations—first, marriage; secondly, parent and child; thirdly, guardian and ward; fourthly, master and servant.

The second division is divided into four parts—first, property in general; secondly, real property; thirdly, personal property; fourthly, acquisition of property.

The title of personal property includes a chapter on shipping, and the rules of navigation. It also includes a chapter on the formation and dissolution of corporations, their stock and powers.

Under the title "Succession to Property," is a section declaring dower and curtesy abolished. This negative enactment illustrates the risk as well as the inconvenience incident to the course that has been pursued of leaving the common law in force in every case "where the law is not declared by the five codes." It is the old puzzle of repeal by implication extended to the greater part of the common law.

The third division, of obligations, contains four parts—first, obligations in general; secondly, contracts; thirdly, obligations implied by law; fourthly, obligations arising from particular transactions.

The fourth division contains five parts—first, relief; secondly, special relations of debtor and creditor; thirdly, nuisances; fourthly, maxims of jurisprudence; fifthly, definitions and general provisions.

It is apparent from this summary that the distribution adopted by the commissioners is not logical, and it does not appear to us to be convenient. The obligations arising from the relation of parentage, or of marriage or guardianship, or of master and servant, differ in no respect, for the purposes of classification,

from other obligations implied by law, and ought not to be separated from them, under the head of "Personal Rights." The contract of marriage is a contract, and should be placed with other contracts. The place for the obligations of masters of vessels, with respect to navigation, is certainly not a division of the title "Personal Property;" nor are the relative obligations of owners of particular estates and of neighbouring owners properly classed as divisions of the title "Real Property," while other rights in respect of specific property, equally enforceable by injunction or otherwise, are treated of as correlative to certain obligations.

The first part of the title "Obligations" is as follows:—

"Sect. 670. An obligation is a legal duty by which a person is bound to do or not to do a certain thing.

"Sect. 671. An obligation arises either from—first, the contract of the parties; secondly, the operation of law."

With respect to the interpretation of "Obligation," we find—

"Sect. 673. An obligation imposed upon several persons, or a right created in favour of several persons, may be—first, joint; secondly, several; or, thirdly, joint and several.

"Sect. 674. An obligation imposed upon several persons, or a right created in favour of several persons, is presumed to be joint and not several, except in the special cases mentioned in the title 'On the Interpretation of Contracts.' This presumption, in the case of a right, can be overcome only by express words to the contrary."

There is here a note, stating that the existing rule of law, which does not allow of a joint and several right, is purely arbitrary; and there is also a reference to sects. 824 and 825.

"Sect. 824. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

"Sect. 825. A promise made in the singular number, but executed by several persons, is presumed to be joint and several."

In a note to sect. 673, it is proposed to insert certain amendments in the code of civil procedure, including the following:—"Sect. c.—A joint and several right can be enforced only once, and either by one party only or by all."

This is a fair example, and the only one which our limits allow us to notice, of the danger of enunciating principles apart from the particular circumstances to which they apply. The rule of the common law is well known to be, that a contract with several persons creates a joint right, or several rights, according as their interests in the subject-matter appear to be joint or several; or if their interests do not appear, according to the import of the language. A contract, conferring at the same time joint and several rights to have one thing done once, is not recognised by the common law, because the result is neither desirable nor possible, although the impossibility is not apparent until a case is contemplated. Several rights are independent rights; but if A. and B. have several rights, say to have 100*l.* paid once, B.'s right can be defeated by A.'s superior diligence, or vice versa. They cannot, therefore, each have a right to the same thing; nor is the right of either to the chance of priority in a scramble, a several right to it, or a right which it is desirable to create or recognise. Suppose, for instance, a joint and several obligation entered into by C. and D. to pay 100*l.* to A. and B., or either of them. A. might recover 100*l.* from C., and B. might in another action re-

cover 100%. from D. This illustration goes to the root of the matter, and is as good as a host. A general rule, expressed apart from the circumstances to which it has been applied, cannot be limited to the cases which are within the reason or policy of the rule. As Bacon says, "Knowledge, that is delivered as a thread to be spun on, ought to be delivered and intimated, if it were possible, in the same method wherein it was invented; and so it is possible of knowledge induced [e. g. from particular decisions.] But in this same anticipated and prevented knowledge [out and dried results], no man knoweth how he came to the knowledge which he hath obtained. But yet, nevertheless, *secundum majus et minus*, a man may revisit and descend into the foundations of his knowledge and consent, and so transplant it into another as it grow in his own mind. For it is in knowledge as it is in plants, if you mean to use the plants, it is no matter for the roots, but if you mean to remove it to grow, then it is more assured to rest upon roots than slips; so the delivery of knowledge as it is now used is as of fair bodies of trees without the roots, good for the carpenter, but not for the planter."

For another example, we may cite the following sections, upon which our space will not permit us to comment, further than to remark, that we find nothing in the code to limit or explain them, and to suggest their application to contracts by marriage settlement:—

"Sect. 748. It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them."

"Sect. 749. A contract made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it."

The following is an unsatisfactory rule, on a subject almost impossible to be dealt with in the abstract way:—

"Sect. 811. A contract is to be interpreted according to the law and usage of the place where it is to be performed [e. g. a contract made in England between a company and contractor to construct a railway in Dahomey], or if it does not indicate a place of performance, according to the law and usage of the place where it is made.

The following needs no comment. It is preceded by a clause declaring penalties void:—

"Sect. 831. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, where from the nature of the case it would be impracticable or extremely difficult to fix the actual damage."

Again: to shew the impossibility of defining copy-right, see

"Sect. 429. The author of any product of the mind, whether it is an invention or a composition in letters or art, or a design with or without delineation or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product, and the representations or expressions thereof made by him, remain in his possession."

After much litigation we have come to a satisfactory understanding of the subject of this clause. Why throw the authorities which have produced this result away, and start anew from an abstract proposition suggesting a host of doubts?

We are here compelled to conclude, repeating our remark, that the singular ability and care which have been employed in the production of this code render it not only an interesting work in itself, but also a most valuable illustration of the inexpediency of substituting statutory rules for judiciary law.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—In the leading article of *The Jurist* of last Saturday, you say, speaking of the *Law Reports*, "Of their rivals it is not likely that one, except the *Law Journal*, will survive the following year."

This statement being injurious to me as proprietor of the *Weekly Reporter*, I trust to your sense of justice to allow me to state in your columns, that I have no intention whatever of discontinuing that publication at the termination of this year. Moreover, I am confidently led to believe the *Weekly Reporter* is as much required now as during any period of its existence.

I remain, sir, yours obediently,
London, Jan. 2, 1867. EDWARD J. MILLIKIN.

PROSPECTUS OF THE LECTURES

To be delivered during the ensuing Hilary Educational Term, by the several Readers appointed by the Inns of Court.

CONSTITUTIONAL LAW AND LEGAL HISTORY.

The Reader on Constitutional Law and Legal History proposes to deliver, during the ensuing Educational Term, Six Public Lectures on the History of the English Constitution and of English Law from the meeting of the Long Parliament to the Restoration.

With his Private Class, the Reader proposes to go through the principal Statutes, Trials, Cases, and State Documents which illustrate the history of the English Constitution, and the history of English Law in the reigns of Charles II and James II. He will use Hallam's Constitutional Law as his principal Text-book.

EQUITY.

The Reader on Equity proposes to deliver, during the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

An Elementary Course.

1. On Pleadings in the Court of Chancery.
2. On the Rights and Liabilities of Married Women recognised by Courts of Equity only.

An Advanced Course.

1. On *Donationes Mortis Causâ*.
2. On the Equitable Presumption arising from a Step taken towards Performance of an Agreement.
3. On the Equitable Consequences of the Substantial Performance of an Agreement.
4. On the Equitable Doctrine of Satisfaction.
5. On the Implied Substitution of one Gift for another.

In the Elementary Private Class, the subjects discussed will be—The Jurisdiction of Equity over Trustees, and Relief in Equity against Penalties and Forfeitures.

In the Advanced Private Class, the Lectures will comprehend—The Reconversion of Property impressed with the character of Personality or Realty; Executory Trusts; Pleading and Evidence in Suits in Equity.

THE LAW OF REAL PROPERTY, &c.

The Reader on the Law of Real Property, &c., proposes to deliver, during the ensuing Educational Term, Twelve Public Lectures (there being Six Lectures in each Course) on the following subjects:—

Elementary Course.

1. On Lord St. Leonards' Statutes (22 & 23 Vict.

c. 35, and 23 & 24 Vict. c. 38), in continuation of last Term's Lectures on the same subject.

2. On Priority of Charges.

Advanced Course.

On Entails, the Law of Fines and Recoveries, and the changes effected by the Act for their Abolition.

In the Elementary Private Classes the Reader will continue his course of Real Property Law, using the work of Mr. Joshua Williams as a Text-book; and in the Advanced Private Classes he will discuss and explain the form, construction, and operation of the documents which are in most frequent use in Conveyancing Practice.

JURISPRUDENCE, CIVIL, AND INTERNATIONAL LAW.

The Reader on Jurisprudence, Civil, and International Law proposes, in the ensuing Educational Term, to deliver Six Public Lectures upon the following subjects:—

1. The History of the Roman Law, from the Reigns of the Antonines until the Death of Justinian, with a Description of the Composition of the Corpus Juris Civilis.

2. A Comparison of the Laws of Rome, England, and France relating to the Disposition of Property by Testament.

3. On Fraud (Dolus Malus), Duress (Metus), and Mistake (Error).

4. Domicil.

In his Private Class, the Reader will continue the Course of Roman Civil Law, with a discussion of the Roman Law relating to Property, using Sandars' Edition of Justinian's Institutes, and the Systema Juris Romani of Mackeldey as Text-books, and contrast with the modern French Law upon the same head.

The Reader, in his Private Class, will also discuss points of International Law relating to the Rights and Duties of Neutrals, using the work of Wheaton as the Text-book, and referring to the works of the principal modern Jurists, the decisions of the Admiralty and Prize Courts of England and America, the Debates in Parliament, and State Papers relating to the cases under discussion.

COMMON LAW.

The Reader on Common Law proposes to deliver, during the ensuing Educational Term, Two Courses (of Six Public Lectures each) on the following subjects:—

Elementary Course.

Injuries to Relative Rights cognisable in Courts of Common Law, the Remedies appropriate thereto, and Proofs adducible in Actions for such Injuries.

In treating the above subject will be noticed, the relation of—(1). Master and Servant. (2). Husband and Wife. (3). Parent and Child. (4). Guardian and Ward.

Advanced Course.

Mercantile Instruments in ordinary use:—

1. Negotiable Instruments.

2. Guarantees.

3. Policies of Insurance.

With his Private Classes, the Reader will examine in detail the Subjects above specified—especially directing attention to the Rules of Evidence ordinarily applicable in Courts of Law, and the Pleadings in Reported Cases. The undermentioned books will be referred to:—

Elementary Class.—Blackstone's Commentaries (21st ed.), vol. 1, cc. 14-17 inclusive.

Advanced Class.—Smith's Leading Cases and Mercantile Law; Byles on Bills and Notes; and Arnould on Marine Insurance.

By order of the Council,
(Signed) WESTBURY, Chairman.

Court Papers.

COMMON-LAW CAUSE LISTS, HILARY TERM, 1867.

Court of Queen's Bench.

NEW TRIALS.

FOR JUDGMENT.

Durham—Ecclesiastical Commissioners for England v. Peart

—Readhead v. Midland Railway Co.

London—Hyams v. Webster

FOR ARGUMENT.

Moved Easter Term, 1865.

Lancast.—Martin v. Smalley (Stands for arrangement)

Moved Hilary Term, 1866.

Midd.—Wood v. Roosey

Moved Easter Term, 1866.

London—Ingram v. Fleming

—Reni v. Lade & ors.

Glamorgan—Reg. v. Dickson (Stands over for special case)

Northumb.—Hughes v. Straker (Stands over)

Liverp.—Wilson v. Bank of Victoria

Leeds—Harris v. Wooler

Tried during Term.

Midd.—Cannon v. Calvert

Moved Trinity Term, 1866.

Midd.—Smith v. Blakey

Tried during Term.

Midd.—Perkin v. Dakin

—Double v. Pulbrook

Moved Mich. Term, 1866.

Midd.—Hando v. London, Chatham, and Dover Railway Co.

—Hales v. Coleman & ors.

Midd.—Woolford v. Wright

—Mitchener v. Hamilton

—Grinoldi v. London General Omnibus Co. (Limit)

Chester—Johnson v. London and North-western Railway Co.

Cornw.—Grenfell and Wife v. Williams & ors.

Bristol—Thomas v. Britton

Derby—Cutts v. Ward

Leeds—Galsworthy v. Scott

Berks.—Foster v. Redgrave

Salop—Lloyd v. Minton

Durham—Harle v. Catterall

Lancast.—Smith v. Lancaster

Manch.—Ogle v. Earl Vane

Liverp.—Makant v. Bullock

—Evans & ors. v. Cooper

Hunt.—Core v. Manchester, Sheffield, and Lincolnshire Railway Co.

Norfolk—Hammond & ors. v. Cattermole & ors.

—Le Strange v. Rowe

—Wood v. Metropolitan Railway Co.

Kent—Tongue v. Plumstead Board of Works

Surrey—Nornille v. Braby

—Emanuel v. Great Western Railway Co.

Carmarth.—Stepney v. Burry

Port Valley Railway Co.

Cardiff—Worthington & an. v. Rhymney Railway Co.

Tried during Term.

Midd.—Smith v. Bill & an.

—Baker v. Stephens,

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR JUDGMENT.

*Bryant v. Foot

†Ecclesiastical Commissioners for England v. Peart

*Lawrence v. Hitch

FOR ARGUMENT.

†Jolwald v. Continental Bank Corporation (Limited) (St. over)

†Tydeman v. Carne (Stands over)

†Hetherington v. Hicks (St. over)

†Keyes & an. v. Edwards & ors. (Sp. C. to be stated)

†Holden v. Whittingham (St. over)

†Nicoll v. Watts

*Richards v. James

*Sharpe v. James

*In re Sparke v. Hollingsworth

*Lord Fitzhardinge v. Pritchett & ors.

*Hemsworth v. Limner

†Crowhurst v. Pitcher

†Marks v. Wearing

†Hooper & an. v. Clark

†Rugg v. Gaze

†Crofts v. Haldane & an.

†Phillips & ors. v. Green

†Baldwin v. Rymer

*Sale & oths. v. Sheffield General Cemetery Co. and 14 other cases

*In re Adam Johnston Farrie

†Galsworthy v. Turner

†Dixon v. Lord Leconfield

†Brightman v. M^r Henry

*St. David's Gold Mining Co. (Limited) v. Bridell

*Biglin v. Wylie & ors.

*Hudson v. Ede

*Proudfoot v. Montefiore, Bart.

*Alston & an. v. Bagshaw

*Panama, &c. Co. v. Lord Kennedy

*Gall v. Mayor of Birmingham

*Lord Kennedy v. Panama &c. Co.
 †Bovill v. Bird
 Thomas v. Davies (App. from County Court, Pembroke)
 *Smith v. Western Counties Manure Co. (Limited)
 †Alston v. Rayner
 *Overseers of Manchester v. Company of Proprietors of Rochdale Canal
 *Hichens v. Bolitho & an.
 *Rushton v. Davenport
 †Scott v. Metropolitan Railway Co.
 *Davies v. Venallt Steam Coal Co. (Limited)
 *Fulk v. Metropolitan Board of Works
 †Taylor v. Clark
 †Bailey v. Bowen
 †Anna Moria Mining Co. (Limited) v. Cambrian Railways Co.

*London and Brighton Railway Co. v. London, Chatham, and Dover Railway Co.
 †Playford v. United Kingdom Electric Telegraph Co. (Limited)
 *Clapp & an. v. Great Western Railway Co.
 †Round & an. v. Payne & an.
 †Erwood v. Millar
 †Sylvester v. Millar
 †Richardson v. Tredale
 *Lloyd v. Barrett
 Sanders v. London & North-western Railway Co. (App. from County Court, Lancaster)
 †Gardiner v. Wilson
 Taylor v. Barnsley (App. from County Court, York)
 †Hogan v. London & Provincial Starch Co. (Limited)
 †Pulley v. Hunt.

Devonshire Reg. v. Inhabitants of the parish of Sherford & ors.
 Lancashire Knowles.
 Leeds Guardians of the Northwich Union & ors., Chester.
 Yorkshire Watson.
 Cinque Ports ... Bowling v. Bailey.
 Berkshire Reg. v. Great Western Railway Co.
 Bridgwater Skinner v. Kitch.
 Cardiff Austin v. Olsen.

Court of Common Pleas.

NEW TRIALS.

FOR ARGUMENT.
Moved Mich. Term, 1883.
 Midd.—Packer & an. v. The Great Western Railway Co. (To stand over till Beal v. South Devon Railway Co. in the House of Lords is disposed of)
Moved Hil. Term, 1886.
 Midd.—Gilbert v. Hassall (Proceedings stayed by injunction from the Court of Chancery)
Moved Easter Term, 1886.
 Beds.—Beckill v. Midland Railway Co. (To stand over till case in House of Lords is disposed of)
 Manchester—Negroponte v. Crossley & ors. (To stand over for argument)
Moved Mich. Term, 1886.
 Midd.—White v. Fenn
 —Gladman v. Johnson
 —Giles v. Dunn & Co. (Limited)
 Lond.—Hillman v. Medcalf
 —Chapman v. Shepherd

Surrey—Whitehead v. Izod (Demurrer to be argued herewith)
 —Merchants' Co. (Limit) v. Benthall
 —Scott v. Lord Ebury
 —Brown & an. v. Bateman
 Essex—Grout v. East London Waterworks Co.
 Devon—Harvey v. Lawrence
 Cornwall—Geake v. Jackson
 Bristol—Hall v. Mayor, &c. of Bristol
 Leeds—Codd v. Brown
 Carnarvon—Mackenzie & ors. Naylor
 Newcastle—Dunn v. James
 Manch.—Tedsweil v. Whitworth
 Liverpool—Cook v. Cook
 —Lord & an. v. Midland Railway Co.
 —Woodger v. Great Western Railway Co.
 Carmarthen—Phillips v. James (In Ejectment)
 Glamorgan.—James v. Great Western Railway Co.
 —Paynter & ors. v. James.

ENLARGED RULES.

First Day.

In re Hopper
 Same v. Same

Mitchell v. Lee
 Reg. v. Ames.

CROWN PAPER.

Yorkshire Hornby v. Close.
 London Reg. v. Lord Mayor of the City of London.
 Wiltshire Churchwardens of Easton v. Churchwardens of St. Mary, Marlborough.
 Liverpool Hodgson v. Liverpool New Market Co.
 Gloucestershire.. Great Western Railway Co. v. Overseers of the Parish of Badgeworth.
 Lincolnshire Green v. Great Northern Railway Co.
 Buckinghamshire Reg. v. Wycomb Railway Co.
 Metropolitan Police District.. Vestry of the Parish of St. George-the-Martyr, Southwark, v. Pethebridge.
 Brighton Brighton Local Board of Health v. Stanning.
 Cumberland Dixon v. Steel.
 Somersetshire .. Reg. v. Brannan.
 Durham Hodgson v. Graveling.
 Blackburn Kenyon & an. v. Wilkinson.
 Lancashire Reg. v. Knowles.
 ————— Same.
 Yorkshire Barnsley Local Board of Health v. Sedgwick.
 Metropolitan Police District.. Taylor v. Metropolitan Board of Works.
 Middlesex Reg. v. Whitley.
 Kent Commissioners of Faversham Navigation v. Assessment Committee of the Faversham Union.
 Monmouthshire .. Rhodes v. Thomas.
 Middlesex Reg. v. London and Blackwall Railway Co.
 Oxfordshire Watson v. Coates.
 Hertfordshire ... Kingsley v. Wilson.
 Yorkshire Thornton v. Nutter.
 Lancashire Paley v. Birch.
 Metropolitan Police District.. Allen v. Baldock.
 ————— Mackay v. Marchant.
 Stockton Harring v. Mayor of Stockton.
 Lancashire Watkins v. Surveyors of Lowton.
 ————— v. Surveyors of Burtonwood.
 Devonshire Jeffery v. Major.
 Lincolnshire Corporation of Lincoln v. Overseers of the extra parochial parish of Holmes Common.
 Coventry Robins v. Wrench.
 Hertfordshire ... Fenson v. Dollemore.
 Monmouthshire .. Reg. v. Martley Union.
 Kent Watson & ors.
 Essex Bruce v. Daunt.

DEMURRER PAPER.

Thursday, Jan. 17.
 Johnson & an. v. Royal Mail Steam-packet Co. (Case at Nisi Prius)
 Consolidated Bank (Limited) v. Smith (D.)
 Mills v. Mayor of Colchester (Case at Nisi Prius)
 National Discount Co. (Limited) v. Contract Corporation (Limited) (D., deft.'s Co. being wound up. To stand over)
 Contract Corporation (Limit.) v. Bateman (D., pliff.'s Co. being wound up. To stand over)
 Myers v. Wigram (D, stand over till after issue tried)
 Whitstable Fishery Co. v. Foreman (Case from arbitrator)
 Yeoman v. Ellison (County Court Appeal)
 Humber v. Derby (County Court Appeal)
 Pickering v. Handley (D.)
 Gerard v. Lewis (D.)
 Azemar v. Casella (Case at Nisi Prius, Demurrer to be argued herewith)
 Same v. Same (D.)
 Bradley v. Cartwright (Case by order)

Nicholson v. Reynolds (D.)
 Ralli & an. v. Schofield & an. (Case at Nisi Prius)
 Williams & an. v. Cadbury & an. (Case by order)
 Derbyshire v. Christie (D.)
 Clarke v. Cosens (D.)
 Shropshire Union Railway & Canal Co. v. North Staffordshire Railway Co. (Case by order)
 Stranks v. St. John (D.)
 Grouhand v. Egerton (D.)
 Gautret v. Same (D.)
 Jones v. Same (D.)
 Whitehead v. Izod (D.)
 Jenkinson v. Nuttall (D.)
 Azemar v. Casella & ors.
 Gage v. Collins (County Court Appeal)
 Shuttleworth v. Grange (Appeal from Magistrates)

Monday, Jan. 21.

Sharland v. Spence & an. (D.)
 Jarchow v. Hughes (D.)
 Kidston v. Metropolitan Railway Co. (D.)
 Connell v. Hollis (D.)
 Rawlings & ors. v. Metropolitan Railway Co. (D.)
 Grant v. Millar & Wife (D.)

Thursday, Jan. 24.

Lilwall v. Dicey (D.)

ENLARGED RULES.

First Day.

In re Merchants Co. (Limited)
ex p. King
Vernon v. Jones
Jones v. Vernon

Fifth Day.

Trowdale & ors. v. North
British Railway Co.
Till further Orders.
In re an action in the Lord
Mayor's Court of London
Clarke v. Lowinger.

CUR. ADV. VULT.

Lane & an. v. Nixon (Judg-
ment deferred till after is-
sues in fact tried)

Smith v. Littledale (Judg-
ment deferred till after is-
sues in fact tried).

Court of Exchequer.

SITTINGS—MICHAELMAS TERM.

Days in Term.

Friday Jan. 11 Motions and Peremptory Paper.
Saturday 12 Errors, Peremptory Paper, and
Motions.

Monday 14
Tuesday 15
Wednesday 16 Special Paper.
Thursday 17 Circuits Chosen.
Friday 18
Saturday 19 Criminal Appeals.
Monday 21 Special Paper.
Tuesday 22
Wednesday 23 Special Paper.
Thursday 24
Friday 25
Saturday 26
Monday 28
Tuesday 29
Wednesday 30
Thursday 31

Days in Term.

Monday Jan. 14 Middlesex, first Sitting.
Monday 21 Middlesex, second Sitting.
Monday 28 Middlesex, third Sitting.

NEW TRIALS.

FOR JUDGMENT.

Lond.—Noble v. Trueman
Moved Easter Term, 1866.
Lond.—Restall v. London &
South-western Railway Co.
Nottingham—Ward & ors. v.
Moss
Chester—Simcock v. Lee (To
stand over for parties to
arrange)

Moved Mich. Term, 1866.
Carlisle—Leconfield v. Dixon
Manchester—Coddington &
ors. v. Paleologo & an.

FOR ARGUMENT.

Moved Hil. Term, 1864.
Liverp.—Brabner v. Macann
(To stand over till special
case settled)
Moved Hil. Term, 1866.
Lond.—Juniper v. Vestry of
Bermondsey (To stand over
till after the decision of a
case in error)

Moved Easter Term, 1866.
Lond.—General Steam Na-
vigation Co. v. British Co-
lonial Steam Ship Co. (To
stand over till after argu-
ment of special case)
— Noble & an. v. Trueman
& an.

Moved Mich. Term, 1866.

Lond.—Hirst v. Sheppard
Norwich—Emery v. Pinker
Liverp.—Johnston v. Ker-
shaw
— Buckle v. Knoop
— Knoop v. Buckle
Liverp.—Adelphi Bank (Li-
mited) v. Johnson
— Holmes v. Rhodes
— Dawber & Wife v. Lan-
cashire and Yorkshire Rail-
way Co.
— Bromham v. Prowse (To
stand over for arrangement)
Chelmsford—Millwall Canal
Co. v. Rawlings
Maidstone—Harmer v. Law-
rence
Guildford—Morice & an. v.
Hunter (To stand till after
argument of similar case in
C. P.)
— Few v. Perkins
Brecon—Anthony v. Brecon
Market Co.
Chester—Dantec v. Ashworth
Exeter—Drewe v. Luxton
Worcester—Jones v. Page
Stafford—Butler v. Knight
— Bettsen v. Gilpin
— Twernlow v. Key
— Taylor v. Great Western
Railway Co.
— Steward v. Haynes

Shrewsbury—Post v. Cam-
brian Railway Co.
Derby—Bates v. Fowkes
— Rooth v. North-eastern
Railway Co.
Nottingh.—Sanderson v. Mid-
land Railway Co.
Lincoln—Priestley v. Pratt
— Harvey v. Meatherringham

York—Gee v. Lucas
— Fobert v. O'Hara
Leeds—Tillett v. Browne
— Read v. Manchester,
Sheffield, and Lincolnshire
Railway Co.
*Moved after the 4th day of
Mich. Term, 1866.*
Midd.—Forster v. Mackreth.

SPECIAL PAPER.

FOR ARGUMENT.

Cooke v. Mostyn & ors. (D.
Part heard 14th Nov. 1864.
To stand over till after is-
sues in fact tried)
Campbell v. Dufaur (D. Part
heard 18th January, 1865.
To stand over till after is-
sues in fact tried)
Ball v. Nash (D. Part heard
30th Nov. 1865. To stand
over till after amendment
of declaration)
Vestry of the Hamlet of Mile
End Old Town, Midd., v.

Humber (D. Part hd. 2nd
May, 1866. To stand over
till after issues in fact tried)
London Mercantile Discount
Co. (Limited) v. Kintrea
(D. Part heard 30th May,
1866. To stand over for
parties to consider whether
the cause shall be referred)
Braun v. Weller (Sp. C. by
order)
Barron v. Bellingham (D.)
Nixon v. Albion Marine In-
surance Co. (Sp. P. by ord.)

PEREMPTORY PAPER.

*To be called on the first Day of Term after the Motions,
and to be proceeded with the next Day, if necessary, be-
fore the Motions.*

In re Jones (For attachment
against for not obeying a
rule of Court)
Suit instituted in the Court of
Record for trial of civil ac-
tion within the city of Man-
chester

Smith v. Close (To set aside
verdict for plaintiff)
Cragg v. Taylor (To rescind
order of Bramwell, B., and
to attach certain shares in
the Glynrhonry Slate Com-
pany).

NISI PRIUS SITTINGS, IN AND AFTER
HILARY TERM, 1867.

Court of Queen's Bench.

In Term.

MIDDLESEX. LONDON.
1st sitting, Monday, Jan. 14
2nd sitting, Friday 18
3rd sitting, Friday 25
There will not be any sittings
during term in London.

After Term.

Friday Feb. 1 | Friday Feb. 15
The Court will sit at ten o'clock every day.
The causes in the list for each of the above sitting days in
term, if not disposed of on those days, will be tried by ad-
journment on the days following each of such sitting days.

Court of Common Pleas.

In Term.

MIDDLESEX. LONDON.
Monday Jan. 14
Friday 18
Friday 25
The Court will not sit in
London during term.

After Term.

Friday Feb. 1 | Wednesday Feb. 13
The Court will sit during and after term at ten o'clock.

Exchequer of Pleas.

In Term.

MIDDLESEX. LONDON.
1st sitting, Monday, Jan. 14
2nd sitting, Monday 21
3rd sitting, Monday 28
The Court will not sit in
London during term.

After Term.

Friday Feb. 1 | Wednesday Feb. 13
The Court will sit during and after term at ten o'clock.
The Court will sit in Middlesex, in term, by adjournment
from day to day until the causes entered for the respective
Middlesex sittings are disposed of.

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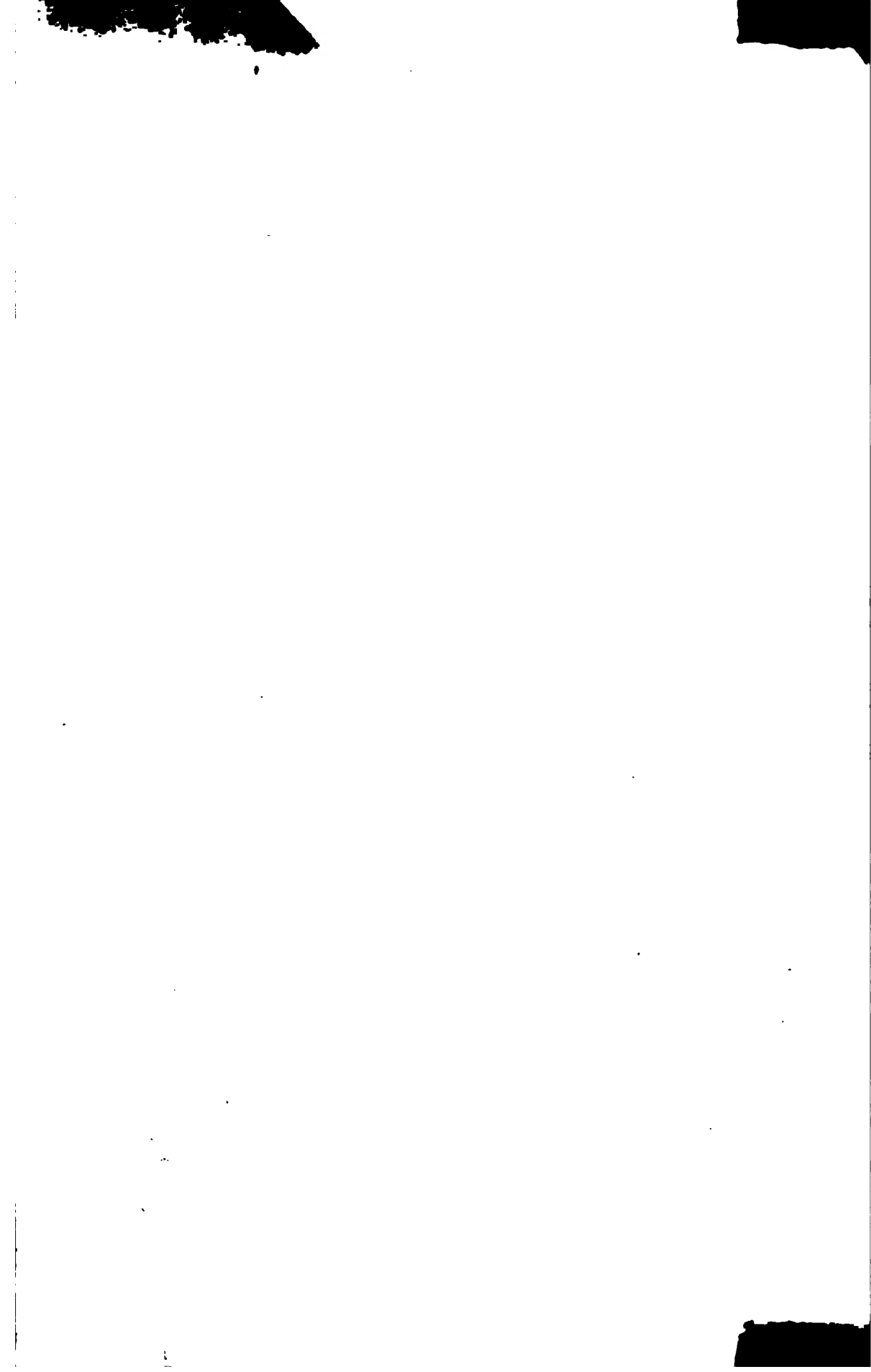
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